Supreme Court, U.S.
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No. 09-36

IN THE

Supreme Court of the United States

THE REPUBLIC OF ARGENTINA,

Petitioner,

v.

CAPITAL VENTURES INTERNATIONAL,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

PETITION FOR A WRIT OF CERTIORARI AND APPENDIX

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July 7, 2009

QUESTION PRESENTED

Whether federal subject-matter jurisdiction exists under Section 1605(a)(1) of the Foreign Sovereign Immunities Act of 1976, 28 U.S.C. §§ 1602-1611 (the "FSIA"), where a foreign state agreed in bond documentation to the jurisdiction of specified foreign (*i.e.*, non-U.S.) courts and its contractual waiver of immunity did not refer to the United States in any way.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

OPINIONS BELOW

The opinion of the court of appeals (App. at 1a-18a) is reported at 552 F.3d 289. The district court granted the motion to dismiss for reasons stated on the record after oral argument and did not issue a written opinion. *See* App. at 59a-60a.

JURISDICTION

The judgment of the court of appeals was entered on January 13, 2009. The court of appeals denied panel rehearing and rehearing en banc on April 9, 2009. *See* App. at 19a-20a. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

The relevant statutory provision is 28 U.S.C. § 1605(a)(1):

> § 1605. General exceptions to the jurisdictional immunity of a foreign state
>
> (a) A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case—

(1) in which the foreign state has waived its immunity either explicitly or by implication, notwithstanding any withdrawal of the waiver which the foreign state may purport to effect except in accordance with the terms of the waiver.

STATEMENT OF THE CASE

This petition presents an important question of federal law involving a foreign state that has been haled into a U.S. court against its will: does a foreign state's submission to the jurisdiction of specified courts, *not including* those of the United States, create subject-matter jurisdiction under the FSIA when it is coupled with a waiver of sovereign immunity by the state?

The district court held that it did not, because these linked provisions could not be read as a waiver of immunity to suit *in the United States*, as the waiver provision of the FSIA, 28 U.S.C. § 1605(a)(1), requires.

The court of appeals reversed, reasoning that because the waiver of immunity was not limited to a specific court, it went beyond the specific courts where the state submitted to jurisdiction, and applied across the board to create jurisdiction in the United States (or, presumably, anywhere else in the world) as well. This question is important to both the foreign relations of the United States, and the large (and growing) number of foreign states that raise funds outside their own borders.

Like many countries, petitioner the Republic of Argentina (the "Republic" or "Argentina") has issued bonds in international capital markets. These bonds were denominated in various currencies, including the U.S. dollar, the Austrian schilling, the British pound sterling, the Deutsche mark, the Italian lira, the Japanese yen, the Spanish peseta, and the Swiss franc. In many cases, bonds issued in a particular market and denominated in local currency were governed by the relevant local law, with a submission to the jurisdiction of the local courts and a waiver of immunity from the jurisdiction of those courts. For example, Argentine bonds issued in the United States were denominated in U.S. dollars and governed by New York law, expressly accepted the jurisdiction of New York courts (as well as courts in Buenos Aires), and waived jurisdictional immunity in those courts; bonds issued in other countries had comparable provisions choosing the law, and submitting to the courts, of that state.

Whether these common provisions also create jurisdiction in the United States for bonds *not* issued or payable in the United States, and *not* providing for a submission to U.S. jurisdiction, is therefore a question of recurring significance that deserves a definitive answer from the Court. In *Republic of Argentina v. Weltover, Inc.*, 504 U.S. 607 (1992), the Court identified a significant federal question and granted certiorari to determine whether, in the absence of a contractual submission to jurisdiction, federal subject-matter jurisdic-

tion existed for suits on sovereign bonds payable in the United States under the "commercial activity" exception to sovereign immunity in Section 1605(a)(2) of the FSIA, which creates jurisdiction over actions arising from commercial activity of the foreign state bearing specified connection with the U.S. forum. *Id.* at 609-10. Here, it is equally important for the Court to resolve whether, under Section 1605(a)(1) of the FSIA, the other most frequently invoked section of the statute, a foreign state can be sued in U.S. courts on bonds containing a general waiver of sovereign immunity but *not* providing for payment in, or other contacts with, the United States by the foreign issuer, and on the contrary providing explicitly for submission to foreign courts' jurisdiction. A ruling on this question will provide guidance to all sovereign issuers regarding the specificity and effect of any waivers of immunity that they may decide to include in their bonds or other transactional documents, including whether waivers may expose them to liability in the United States when they contain no reference to the United States.

A. Background

The present case concerns bonds issued by the Republic in Germany (the "German Bonds"). The Republic issued the German Bonds and other foreign debt instruments during the 1990s, when it "enacted a series of structural reforms" that successfully "recast the basis of public finance" and were widely praised as a model for free market reforms in developing countries. World Bank,

ARGENTINA: FROM INSOLVENCY TO GROWTH 12 (1993). Following the international financial crisis of 1998, however, the Republic fell into a deep recession and experienced the worst economic catastrophe of its modern history. *See generally* Paul Blustein, AND THE MONEY KEPT ROLLING IN (AND OUT): WALL STREET, THE IMF, AND THE BANKRUPTING OF ARGENTINA (2005).

By the end of 2001, this crisis made it impossible for the Republic to service its overwhelming debt burden—some $80 billion in public external debt alone—while maintaining basic governmental services necessary for the health, welfare, and safety of the Argentine populace. "[U]nable to service its debt," the Republic was forced to defer interest and principal payments to its bondholders, and seek a voluntary restructuring of its crippling debt burden. Panel of Independent Advisors, *Economic and Financial Issues Facing Argentina*, IMF News Brief No. 02/80, July 29, 2002, ¶ 1, *available at* http://www.imf.org/external/np/sec/nb/2002/nb0280.htm.

B. The German Bonds

The German Bonds, which were denominated in Deutsche marks, are entirely German instruments governed by German law. *See, e.g.*, 8% Deutsche Mark Bonds of 1997/2009, Offering Circular § 13(1), App. at 94a. Their terms are in German, and they designate the place of performance as Frankfurt am Main, Germany. *See id.* § 13(2), App. at 94a. The German Bonds provide that payments be made

in Deutsche marks or euros (which replaced the Deutsche mark as the legal tender in Germany). *See id.* § 5(1), App. at 83a. All notices concerning the bonds must be published in German newspapers. *See id.* § 12, App. at 94a. The German Bonds prohibit the appointment of a U.S. paying agent and otherwise lack any connection to the United States. *See id.* § 5(3), App. at 83a-84a.

Not surprisingly, the terms and conditions of the German Bonds contain a submission to the jurisdiction of the courts of Frankfurt am Main, as well as the City of Buenos Aires, for any suits arising out of or relating to the bonds:

> *The Republic hereby irrevocably submits to the non-exclusive jurisdiction of the District Court (Landgericht) in Frankfurt am Main and any federal court sitting in the City of Buenos Aires as well as any appellate court of any thereof, in any suit, action or proceeding against it arising out of or relating to these Bonds.* The Republic hereby irrevocably waives—to the fullest extent it may effectively do so—the defense of an inconvenient forum to the maintenance of such suit or action or such proceeding and any present or future objection to such suit, action or proceeding whether on the grounds of venue, residence or domicile. The Republic agrees that a final judgment in any such suit, action or proceeding in the courts mentioned above shall be conclusive and may be enforced in other juris-

> dictions by suit on the judgment or any other method provided by law.

Offering Circular § 13(3) ("Section 13(3)"), App. at 94a-95a (emphasis added).

Immediately after the submission to the jurisdiction of Frankfurt and Buenos Aires courts in Section 13(3), the German Bonds provide as follows:

> To the extent that the Republic has or hereafter may acquire any immunity (sovereign or otherwise) from jurisdiction of any court or from any legal process (whether through service or notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise), with respect to itself or its revenues, assets or properties, the Republic hereby irrevocably waives such immunity in respect of its obligations under the Bonds to the extent it is permitted to do so under applicable law.

Offering Circular § 13(4) ("Section 13(4)"), App. at 95a.

The German Bonds make no reference whatsoever to suit, or to a waiver of immunity from suit, in the United States (or, indeed, to any jurisdiction other than Frankfurt and Buenos Aires). By contrast, the Fiscal Agency Agreement (the "FAA") that governs bonds issued by the Republic in the United States, which were denominated in U.S. dollars and are entirely U.S. instruments, explicitly waived the Republic's immunity from suit in New York and Buenos Aires:

> The Republic hereby appoints Banco de la Nación Argentina . . . as its authorized agent . . . upon whom process may be served in any action arising out of or based on the Securities or this Agreement by the holder of any Security which may be instituted in *any state or federal court in The City of New York*, and expressly accepts the jurisdiction of any such court in respect of such action.
>
> . . .
>
> Notwithstanding the foregoing, any action arising out of or based on the Securities may be instituted by the holder of any Security in any competent court in the Republic of Argentina.
>
> The Republic hereby irrevocably waives and agrees not to plead any immunity from the jurisdiction of any such court [*i.e.*, any state or federal court in The City of New York and any competent court in the Republic] to which it might otherwise be entitled in any action arising out of or based on the Securities or this Agreement by the holder of any Security.

FAA § 22 (emphasis added), App. at 97a-99a.

C. Respondent Capital Ventures International ("CVI")

CVI is a Cayman Islands hedge fund that purchased the German Bonds (as well as bonds issued under the FAA and other governing documents) as a litigation investment years after the collapse of the Argentine economy, when those bonds were trading for less than a third of their face value. Like Argentina's other creditors, CVI had the opportunity to participate in the Republic's global exchange offer in 2005—a voluntary debt restructuring in which the beneficial owners of approximately $62.5 billion in principal amount, or over 76% of the aggregate eligible debt, tendered their old, nonperforming bonds for new, performing bonds with lower interest rates, reduced principal, and/or longer maturities. *See EM Ltd. v. Republic of Argentina*, 131 Fed. Appx. 745, 747 (2d Cir. 2005) (affirming vacatur of attachments of bonds tendered in exchange offer to protect "the economic health of a nation"). CVI chose to reject the Republic's offer and has pursued litigation instead, suing on the German Bonds both in New York, and in a separate lawsuit on bonds of the same series in Germany, the contractually selected forum. *See* Reply Decl. of Eric S. Meyer, dated Oct. 27, 2006 ¶¶ 2-3, *Capital Ventures Int'l v. Republic of Argentina*, 05 Civ. 4085 (TPG) (S.D.N.Y.).

D. The District Court's Dismissal of the German Bond Claims

On July 28, 2005, the Republic moved to dismiss CVI's Amended Complaint. On February 15, 2007, the district court granted this motion for claims based on the German Bonds. App. at 59a-60a. Analyzing the plain language of the document, including Section 13(3), the district court concluded that the "sensible effect" of this provision was as a limited submission to the jurisdiction of the courts of Frankfurt and Buenos Aires. *Id.* at 42a-43a. The district court understood Section 13(4) to have "some very broad language" but ruled that "whatever it means it should not be read as reading out of this instrument the reference to Frankfurt and the city of Buenos Aires." *Id.* at 44a. The district court also relied on "case law which would support the idea that where there is an expressed grant of jurisdiction in specific places . . . a general waiver of sovereign immunity does not mean that . . . suit can be brought any place in the world." *Id.* Because the Republic explicitly waived its sovereign immunity to suit in Frankfurt and Buenos Aires courts—but not U.S. courts—the district court dismissed the German Bond claims.

E. The Court of Appeals' Reversal

The court of appeals disagreed with the district court's interpretation of Sections 13(3) and 13(4). Focusing on the broad language of Section 13(4) in isolation from the jurisdictional submission in Section 13(3), the court of appeals held that "[t]his pro-

vision clearly and unambiguously waives Argentina's 'immunity (sovereign or otherwise)' in '*any* court'" and was "an 'explicit' waiver" of immunity for purposes of the FSIA. App. at 9a (emphasis in original). The court of appeals rejected the Republic's argument that reading Section 13(4) in this way would "render[ ] subsection 3 superfluous" and further determined that "[t]here can be explicit waivers without a reference to the United States." *Id.* at 10a-11a. Based on this reasoning, the court of appeals reversed the district court's dismissal of the German Bond claims and vacated its denial of CVI's motion for summary judgment on those claims. *Id.* at 14a.

REASONS FOR GRANTING THE PETITION

"Under the venerable principle of foreign sovereign immunity," *Republic of Iraq v. Beaty*, 129 S. Ct. 2183, 2186 (2009), foreign sovereigns enjoy "freedom . . . from being haled into court as a defendant" unless an exception to immunity applies. *Nat'l City Bank of N.Y. v. Republic of China*, 348 U.S. 356, 358 (1955). Under the FSIA, which provides the sole source of subject-matter and personal jurisdiction over a foreign state, *see* 28 U.S.C. §§ 1330, 1604; *Argentine Republic v. Amerada Hess Shipping Corp.*, 488 U.S. 428, 434-35 (1989), foreign states such as the Republic are "presumptively immune from the jurisdiction of United States courts; unless a specified exception applies, a federal court lacks subject-matter jurisdiction over a claim against a foreign state."

Saudi Arabia v. Nelson, 507 U.S. 349, 355 (1993). Therefore, to bring suit on the German Bonds, CVI was required to demonstrate the applicability of a specific exception to the Republic's sovereign immunity under Section 1605 of the FSIA.

The courts below considered the applicability of Section 1605(a)(1) of the FSIA, which provides:

> A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case in which the foreign state has waived its immunity either explicitly or by implication, notwithstanding any withdrawal of the waiver which the foreign state may purport to effect except in accordance with the terms of the waiver.

Id. Under this particular provision, subject-matter jurisdiction is based on a foreign state's waiver of immunity; there is no subject-matter jurisdiction if there is no waiver. It is the plaintiff that must plead and prove the foreign state's waiver of immunity, for purposes of establishing subject-matter (as well as personal) jurisdiction.[1] *See Can-Am Int'l,*

[1] Personal jurisdiction over a foreign state exists where there is subject-matter jurisdiction and service has been made under Section 1608 of the FSIA. 28 U.S.C. § 1330(b). The Court has never decided whether, besides this statutory personal jurisdiction, due process also requires minimum contacts between the foreign state and the United States. *Compare Verlinden B. V v. Cent. Bank of Nigeria*, 461 U.S. 480, 488 (1983), *with I.T. Consultants, Inc. v. Islamic Republic of Pakistan*, 351 F.3d 1184, 1191 (D.C. Cir. 2003); *World*

LLC v. Republic of Trinidad & Tobago, 169 Fed. Appx. 396, 402 (5th Cir.), *cert. denied*, 549 U.S. 881 (2006). Section 1605(a)(1) is therefore functionally an exception to the general rule that "sovereign immunity is an affirmative defense which must be specially pleaded." H.R. Rep. No. 94-1487, at 17 (1976), *reprinted in* 1976 U.S.C.C.A.N. 6604, 6616.

This Court has had occasion to consider Section 1605(a)(1) of the FSIA only once, in a case twenty years ago coincidentally also involving the Republic. *Amerada Hess* arose after the Argentine military attacked a Liberian oil tanker during the Malvinas War, more commonly known as the Falklands War. *See* 488 U.S. at 432. The owner of the tanker, as well as the Liberian corporation that had chartered the tanker to transport fuel from Alaska to the U.S. Virgin Islands, sued the Republic in New York for damages. *See id.* at 431. The district court dismissed the action for lack of subject-matter jurisdiction but was reversed by a divided panel of the court of appeals that was in turn reversed by this Court. *See id.* at 433. In holding that none of the FSIA's exceptions to immunity was applicable, the Court stated that it did not "see how a foreign state can waive its immunity under § 1605(a)(1) by signing an international agreement that contains no mention of a waiver of immunity

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Wide Minerals, Ltd. v. Republic of Kazakhstan, 296 F.3d 1154, 1159 n.5 (D.C. Cir. 2002), *cert. denied*, 537 U.S. 1187 (2003). The court of appeals here noted this issue but did not decide it. App. at 8a n.3.

to suit in United States courts or even the availability of a cause of action in the United States." *Id.* at 442-43.

Here, the German Bonds likewise contain no mention of a waiver of immunity to suit in the United States or the availability of a cause of action in the United States. The only jurisdictions that they mention are Frankfurt, where the bonds were issued and to be paid, and the Republic's capital of Buenos Aires. *See* Offering Circular §§ 13(2)-(3), App. at 94a-95a. The Republic "has clearly and unambiguously" waived its immunity in only these two jurisdictions, the logical and natural fora for disputes concerning German Bonds issued by Argentina. *World Wide Minerals, Ltd. v. Republic of Kazakhstan*, 296 F.3d 1154, 1162 (D.C. Cir. 2002), *cert. denied*, 537 U.S. 1187 (2003); *see Aquamar S.A. v. Del Monte Fresh Produce N.A.*, 179 F.3d 1279, 1292 (11th Cir. 1999) ("An express waiver under section 1605(a)(1) must give a clear, complete, unambiguous, and unmistakable manifestation of the sovereign's intent to waive its immunity.") (quotation omitted). As the district court recognized, Section 13(3)'s specific waiver would be "read[ ] out of" the German Bonds under the court of appeals' reading of Section 13(4), App. at 44a, which treated Section 13(4) as an explicit waiver of immunity to suit in the United States for purposes of Section 1605(a)(1) of the FSIA, despite the lack of any connection between the German Bonds and the United States and the absence of any evidence in the record that the Republic was even thinking

about the United States or the FSIA when it issued the German Bonds in Germany, and submitted to jurisdiction in Germany and Argentina for suit on those bonds. Instead of treating Section 13(4) as a "belt and suspenders" provision to insure a waiver of immunity in the courts where the Republic agreed to be sued in Section 13(3), the court of appeals treated it as an independent basis for federal subject-matter jurisdiction in the United States, divorced from the Republic's jurisdictional submission and forum selection.

The fact that the Republic did not consent to be sued in the United States on German Bond claims is all the more clear when one compares the German Bonds with the FAA bonds, which were issued by the Republic in the United States. These bonds contain an express waiver for lawsuits in New York courts in the first instance; they do not waive the Republic's immunity to suit in any other court in the United States or elsewhere prior to a New York court's final judgment in a particular case, thus waiving immunity outside New York only for purposes of post-judgment execution. *See* FAA § 22, App. at 97a; *NML Capital, Ltd. v. Republic of Argentina*, No. 04-0197 (CKK), slip op. at 20-23 (D.D.C. Aug. 3, 2005); *cf. Marra v. Papandreou*, 216 F.3d 1119, 1123 (D.C. Cir. 2000) ("If the Greek government were sued by Marra for breach of two different contracts, it certainly would have the prerogative to waive a sovereign immunity defense with respect to one of the contracts and invoke that defense for the other."). It is counterintuitive that

the German Bonds, which have no connection with the United States whatsoever, would subject the Republic to suit anywhere in the United States (not to mention the world) when the FAA bonds, which are entirely U.S. instruments, would subject the Republic to suit only in New York.

The question whether a non-specific waiver of sovereign immunity, with no specific mention of the United States, linked with a specific submission to jurisdiction in specific courts outside the United States, operates to create federal subject-matter jurisdiction over the state that gives such a waiver is an important question of federal law that this Court has not settled, but should. Six years before *Amerada Hess* the Court expressly declined to "decide whether, by waiving its immunity, a foreign state could consent to suit based on activities wholly unrelated to the United States." *Verlinden B.V. v. Cent. Bank of Nigeria*, 461 U.S. 480, 490 n.15 (1983). That question is now presented by the facts of this case, in which claims on German Bonds having nothing to do with the United States are sought to be brought in U.S. courts through a waiver of sovereign immunity that does not refer to the United States in any way. Substantial comity issues and the foreign relations concerns behind them counsel a reading of the FSIA in a manner that does not, in the absence of a clear Congressional command, extend the reach of U.S. judicial jurisdiction over wholly foreign activities of foreign countries, when those countries, in ordering their affairs with private persons, have specifically des-

ignated courts other than those of the United States as the forum for adjudicating disputes. *Compare Asahi Metal Indus. Co. v. Super. Ct.*, 480 U.S. 102, 116 (1987) (recognizing potential due process concerns where exercise of personal jurisdiction over private foreign party in case lacking meaningful connection with United States "would be unreasonable and unfair" given "the international context, the heavy burden on the alien defendant, and the slight interests of the plaintiff and the forum State").

Although the absolute theory of sovereign immunity no longer protects foreign states from all litigation in U.S. courts, it remains the case that "foreign sovereign immunity . . . aims to give foreign states and their instrumentalities some present protection from the inconvenience of suit as a gesture of comity." *Republic of Austria v. Altmann*, 541 U.S. 677, 696 (2004) (original emphasis and quotation omitted). The court of appeals' holding that the Republic is subject to suit in the United States on the German Bonds—when the Republic had no connection whatsoever with the United States concerning these bonds, and accordingly did not "reasonably anticipate being haled into court [here]," *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980)—seriously weakens that protection.

The obvious contrast between the Republic's waivers of sovereign immunity for the German Bonds and bonds issued in the United States under New York law makes this case an optimal vehicle

for deciding the waiver question presented. There is a clean record on which the Court may definitively decide the question left open in *Amerada Hess*: whether a foreign state explicitly waives jurisdictional immunity in the United States by signing a contract "that contains no mention of a waiver of immunity to suit in United States courts or even the availability of a cause of action in the United States," 488 U.S. at 442-43, because the contract links a submission to the jurisdiction of other nations' courts with a waiver of sovereign immunity. The answer to this question—contrary to the court of appeals decision—should be "no," and the Court should grant certiorari to give it.

CONCLUSION

The petition for a writ of certiorari should be granted.

Dated: New York, New York
July 7, 2009

Respectfully submitted,

/s/_____

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APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

August Term 2008

(Argued: November 10, 2008

Decided: January 13, 2009)

Docket No. 07-1551-cv

Capital Ventures International,

Plaintiff-Appellant,

—v.—

Republic of Argentina,

Defendant-Appellee.

B e f o r e : SOTOMAYOR, KATZMANN, and HALL,

Circuit Judges.

OPINION

Appeal from a judgment of the United States District Court for the Southern District of New York (Griesa, *J.*) dismissing, for lack of subject matter jurisdiction, those claims of plaintiff-appellant Capital Ventures International that relate to bonds issued by defendant-appellee Republic of Argentina

under German law, and denying Capital Ventures International's request for statutory prejudgment interest on unpaid interest payments that would have come due on United States dollar denominated bonds issued by the Republic after the acceleration of those bonds. We affirm in part and vacate in part, finding that there is subject matter jurisdiction over the claims relating to the German bonds because Argentina explicitly waived its sovereign immunity to suit in United States courts on those claims, and that the district court correctly determined that no interest payments became due on the United States bonds after they had been accelerated.

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KATZMANN, *Circuit Judge*:

This case calls upon us in principal part to determine whether the Republic of Argentina explicitly waived its sovereign immunity from suit in the United States as to claims relating to bonds issued by Argentina under German law.

Plaintiff-appellant Capital Ventures International ("CVI") appeals from a judgment of the United States District Court for the Southern District of New York (Griesa, *J.*) dismissing, for lack of subject matter jurisdiction, those of CVI's claims that relate to bonds issued by defendant-appellee Republic of Argentina ("Argentina" or "the Republic") under German law, and denying CVI's request for statutory prejudgment interest on unpaid interest payments that would have come due on United States dollar denominated bonds issued by the Republic after the acceleration of those bonds. We find that there is subject matter jurisdiction over the claims relating to the German bonds because Argentina explicitly waived its sovereign immunity to suit in United States courts on those claims, and that the district court correctly determined that no interest payments became due on the United States bonds after they had been accelerated. Accordingly, we affirm in part and vacate in part.

FACTUAL BACKGROUND

CVI is the beneficial owner of certain bonds issued by the Republic of Argentina. One group of the bonds owned by CVI is governed by German law, and these bonds are denominated in Deutsche

Marks and Euros ("the German bonds"). Each German bond was issued pursuant to its own offering circular. Section 13 of the offering circulars provides in part:

> (3) The Republic hereby irrevocably submits to the non-exclusive jurisdiction of the District Court (Landgericht) in Frankfurt am Main and any federal court sitting in the City of Buenos Aires as well as any appellate court of any thereof, in any suit, action or proceeding against it arising out of or relating to these Bonds. The Republic hereby irrevocably waives—to the fullest extent it may effectively do so—the defense of an inconvenient forum to the maintenance of such suit or action or such proceeding and any present or future objection to such suit, action or proceeding whether on the grounds of venue, residence or domicile. The Republic agrees that a final judgment in any such suit, action or proceeding in the courts mentioned above shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or any other method provided by law.
>
> (4) To the extent that the Republic has or hereafter may acquire any immunity (sovereign or otherwise) from jurisdiction of any court or from any legal process (whether through service or notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise), with respect to itself or its revenues, assets or properties, the Republic here-

> by irrevocably waives such immunity in respect of its obligations under the Bonds to the extent it is permitted to do so under applicable law.[1]

The remainder of the bonds owned by CVI are denominated in United States dollars ("the U.S. bonds") and were issued pursuant to a Fiscal Agency Agreement ("FAA"). The FAA provides that Argentina will "pay interest" on the principal of the U.S. bonds "until the principal . . . is paid." It also sets forth periodic dates on which interest is due. The FAA contains an acceleration provision, which does not specify whether or not interest is due on the periodic dates after any acceleration.[2]

In December 2001, Argentina declared a moratorium on the payment of principal and interest on its foreign debt and stopped paying principal and interest on the bonds at issue here. In response to the default, on various dates in 2005 and 2006, CVI accelerated the bonds it owned, making the principal immediately due.

The instant lawsuit was filed in the Southern District on April 25, 2005. After various preliminary proceedings, the district court granted summary judgment in favor of CVI on the claims

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[1] This language is taken from the Offering Circular governing the 8% Deutsche Mark Bonds of 1997/2009. The parties agree that every offering circular contains substantially identical provisions, insofar as is relevant to this appeal.

[2] This provision governs the acceleration of the payment of principal upon certain events of default.

related to the U.S. bonds on May 17, 2006. Subsequently, on February 15, 2007, the district court held an oral argument on various open issues, including Argentina's motion to dismiss the claims related to the German bonds for lack of subject matter jurisdiction and CVI's request for statutory prejudgment interest on certain interest payments it claimed were due after acceleration of the U.S. bonds.

At the oral argument, the district court ruled that it lacked subject matter jurisdiction over the claims relating to CVI's German bonds because Argentina was entitled to sovereign immunity with respect to those claims; the district court accordingly dismissed the German bond claims. Construing section 13(3) and (4) of the offering circulars, the district court concluded that Argentina had not explicitly waived its sovereign immunity in U.S. courts in section 13. Instead, it held that subsection 3 was a limited submission to the jurisdiction of courts in Frankfurt and Buenos Aires. The district court reasoned that "whatever [subsection 4] means it should not be read as reading out of this instrument the reference to Frankfurt and the city of Buenos Aires." Accordingly, while acknowledging that the language of subsection 4 was "very broad," the district court ultimately held that "where there is an expressed grant of jurisdiction in specific places . . . a general waiver of sovereign immunity [such as in subsection 4] does not mean that . . . suit can be brought any place in the world." Having found that Argentina did not waive its sovereign immunity to suit in U.S. courts, the

district court dismissed the German bond claims and concomitantly denied CVI's motion for summary judgment on those claims.

As to CVI's request for prejudgment interest, the district court found that the FAA did not require the continued payment of interest after the principal was accelerated, because the act of accelerating the principal so that "[i]t is due now" is inconsistent with interest that "continue[s] to accrue quarterly" where the contract does not specifically provide that contractual interest continues to accrue. Accordingly, the district court only awarded prejudgment interest, at the contractual rate, for the entire amount of the principal after the date of acceleration and for interest payments that were due but unpaid prior to acceleration.

On March 16, 2007, the district court entered final judgment reflecting its rulings at the February 15, 2007 oral argument. This appeal followed.

DISCUSSION

On appeal, CVI challenges both the dismissal of the claims related to the German bonds and the denial of prejudgment interest on interest payments that would have come due after acceleration of the U.S. bonds.

A. Sovereign Immunity

1. Background Law and Standard of Review

The Foreign Sovereign Immunities Act ("FSIA") "is the sole source for subject matter jurisdiction over any action against a foreign state." *Kensington*

Int'l Ltd. v. Itoua, 505 F.3d 147, 153 (2d Cir. 2007) (internal quotation marks omitted); *see* 28 U.S.C. §§ 1330(a), 1604. The FSIA provides that foreign sovereigns are immune from suit unless a specific exception to sovereign immunity applies. *Id.* § 1604. One such exception is that a foreign state is not immune from suit "in any case . . . in which the foreign state has waived its immunity either explicitly or by implication."[3] *Id.* § 1605(a)(1). The term "explicit," in this context, takes its normal meaning of "clear and unambiguous." *Libra Bank Ltd. v. Banco Nacional de Costa Rica, S.A.*, 676 F.2d 47, 49 (2d Cir. 1982) (interpreting 28 U.S.C. § 1610(d)). The purpose of an "explicit" waiver requirement "is to preclude inadvertent, implied, or constructive waiver in cases where the intent of the foreign state is equivocal or ambiguous." *Id.*

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[3] Congress has provided that personal jurisdiction over a foreign state exists when the FSIA permits a suit against that state and the service of process requirements set forth in 28 U.S.C. § 1608 have been satisfied, *see* 28 U.S.C. § 1330(b), although even in the FSIA context the requirements of due process must be satisfied before a court may exercise personal jurisdiction. *See Texas Trading & Mill. Corp. v. Federal Republic of Nigeria*, 647 F.2d 300, 308 (2d Cir. 1981). It should be noted, however, that this Court recently heard oral argument on the question of whether *Texas Trading* remains good law. *See Frontera Res. Azer. Corp. v. State Oil Co. of the Azer. Republic*, No. 07-1815-cv (2d Cir. argued Oct. 27, 2008). We need not address the issue of personal jurisdiction here, as Argentina has not raised it before us and the district court did not consider it. We express no opinion as to whether Argentina may raise the issue on remand or whether Argentina has waived any objection to personal jurisdiction by failing to raise it before the district court.

"On appeal from a dismissal for lack of subject matter jurisdiction, we review the district court's legal conclusions de novo . . . ." *Correspondent Servs. Corp. v. First Equities Corp. of Fla.*, 442 F.3d 767, 769 (2d Cir. 2006) (per curiam). The interpretation of a contract is a legal question which is also reviewed de novo. *Phillips v. Audio Active Ltd.*, 494 F.3d 378, 384 (2d Cir. 2007).

2. Discussion

In the offering circulars, Argentina explicitly waived its sovereign immunity to suit in U.S. courts on claims related to the German bonds. Section 13(4) of the offering circulars provides that, "[t]o the extent that the Republic has or hereafter may acquire any immunity (sovereign or otherwise) from jurisdiction of any court or from any legal process . . . , the Republic hereby irrevocably waives such immunity in respect of its obligations under the Bonds to the extent it is permitted to do so under applicable law." This provision clearly and unambiguously waives Argentina's "immunity (sovereign or otherwise)" in "*any* court." This clear language satisfies the FSIA's requirement of an "explicit" waiver.

Argentina advances the argument that section 13(4), read in conjunction with section 13(3), merely allows for judgments obtained pursuant to section 13(3) to be enforced in other courts. However, the language of subsection 4 is not so limited. Subsection 4 refers to "any legal process (whether through service or notice, attachment prior to judgment, attachment in aid of execution, execution or

otherwise)," language that contemplates actions other than those to enforce judgments. Further, subsection 3 ends with the provision that "a final judgment in any such suit . . . in the courts mentioned above . . . may be enforced in other jurisdictions by suit on the judgment or any other method provided by law." If the Republic's interpretation of subsection 4 were adopted, this last sentence in subsection 3 would render subsection 4 superfluous, a result that should be avoided.[4] *See United States v. Hamdi*, 432 F.3d 115, 123 (2d Cir. 2005). Further, if subsection 4 were intended to discuss enforcement in other jurisdictions, we would expect that the same terms in the last sentence of subsection 3 would be repeated in subsection 4—but they are not. Accordingly, we do not read section 13(4) as applying only to the enforcement of judgments.

Argentina also argues that reading section 13(4) as a waiver of sovereign immunity in any court renders subsection 3 superfluous, a result which, as just discussed, is disfavored. *See id.* According to Argentina, under such a reading Argentina has "agree[d] to jurisdiction in Germany and Argentina" in subsection 3 and also "agree[d] to jurisdiction everywhere" in subsection 4. Of course, such an interpretation of section 13(4) would render subsection 3 superfluous--but that is not what sub-

[4] We note that the offering circulars are governed by German law. The parties have not presented us with anything to suggest that German law would alter the essential analysis. Indeed, they have not cited any German law with respect to any aspect of this case.

section 4 says. Subsection 4 is a waiver of Argentina's "immunity (sovereign or otherwise)," but it does not waive other objections to suit that Argentina might have, such as objections based on lack of personal jurisdiction, improper venue, or forum non conveniens. Section 13(3), on the other hand, provides that Argentina "submits to the nonexclusive jurisdiction" of the courts in Frankfurt and Buenos Aires as well as "waives . . . the defense of an inconvenient forum . . . and any . . . objection . . . on the grounds of venue, residence or domicile." It is thus clear that reading subsection 4 as a waiver of sovereign immunity in any court does not render subsection 3 superfluous.

Argentina also presses the argument that the case law reveals a requirement that, to be explicit, a waiver must contain a reference to the United States or a specific jurisdiction within the United States. We do not find such a requirement in the cases. Of course, a specific reference to the United States can be helpful in determining that a waiver meets the FSIA's requirement of explicitness, *see, e.g.*, *Proyecfin de Venez., S.A. v. Banco Indus. de Venez., S.A.*, 760 F.2d 390, 393 (2d Cir. 1985) (finding an explicit waiver obvious where the waiver mentioned New York courts), but the statutory requirement is only that the waiver be "explicit." There can be explicit waivers without a reference to the United States, as the waiver of immunity in "any court" in this case illustrates. *See also Walker Int'l Holdings Ltd. v. Republic of Congo*, 395 F.3d 229, 234 (5th Cir. 2004) (finding an explicit waiver under the FSIA where a contract read "[t]he Congo

hereby irrevocably renounces to claim any immunity during any procedure relating to any arbitration decision handed down by an Arbitration Court"); *World Wide Minerals, Ltd. v. Republic of Kazakstan*, 296 F.3d 1154, 1162 & n.13 (D.C. Cir. 2002) (finding an "express waiver[] of sovereign immunity" where the waiver said "[i]n respect of any arbitration or legal action or proceedings arising out of or in connection with this Agreement, . . . [the Kazakhstan State Committee] hereby irrevocably agrees not to claim and hereby irrevocably waives . . . immunity for itself and the assets of the Republic of Kazakstan to the full extent permitted by the laws of such jurisdiction"). Any other result would stray from the plain meaning of the statutory language. *See United States v. Santos*, 541 F.3d 63, 67 (2d Cir. 2008) ("Statutory interpretation always begins with the plain language of the statute, assuming the statute is unambiguous." (internal quotation marks omitted)).

Despite Argentina's argument, *Argentine Republic v. Amerada Hess Shipping Corp.*, 488 U.S. 428 (1989), does not require a contrary result. In *Amerada Hess*, the Supreme Court stated that it did not "see how a foreign state can waive its immunity under § 1605(a)(1) by signing an international agreement that contains no mention of a waiver of immunity to suit in United States courts or even the availability of a cause of action in the United States." *Id.* at 442-43. Argentina would have us read this language as a requirement that, for a waiver to satisfy the FSIA's explicitness requirement, it must mention the United States in some

way. That is not the holding of *Amerada Hess*. The international agreements at issue in *Amerada Hess* were the Geneva Convention on the High Seas, Apr. 29, 1958, 13 U.S.T. 2312, and the Pan American Maritime Neutrality Convention, Feb. 20, 1928, 47 Stat. 1989—neither of which mentions waiving sovereign immunity at all, let alone in the United States. The offering circulars at issue here, which are contracts between Argentina and the bondholders, are far removed from multi-party international agreements and do discuss waiver of sovereign immunity to suit in *any* court, thereby indicating "waiver of immunity to suit in United States courts." *Amerada Hess*, 488 U.S. at 442-43. Accordingly, *Amerada Hess* does not control the outcome here.

There is likewise no support in our cases for Argentina's suggestion that the mention of specific, non-United States jurisdictions in subsection 3 of the offering circulars precludes a finding that Argentina waived its sovereign immunity to suit in the United States. Of course it is true that there will be cases in which, when a document mentions a non-U.S. jurisdiction, there will be no explicit waiver for FSIA purposes because it will be clear that there is no intent to waive sovereign immunity in United States courts. *See, e.g., Eaglet Corp. v. Banco Cent. De Nicar.*, 839 F. Supp. 232, 234 (S.D.N.Y. 1993) (finding no explicit waiver where jurisdictional clause stated "[t]his Agreement is governed by English law and therefore BCN submits to the nonexclusive jurisdiction of the English High Court of Justice"); *Atl. Tele-Network Inc. v.*

Inter-Am. Dev. Bank, 251 F. Supp. 2d 126, 133 (D.D.C. 2003) (finding that a broad, nongeographically limited waiver of immunity, when "juxtapos[ed] immediately below a choice-of-law selection clause (specifying the law of Guyana) and above a forum-selection clause (specifying the courts of Guyana)," does not waive immunity in the United States). It is not true, however, that the mere mention of a non-U.S. jurisdiction will preclude a finding of waiver, because the statute requires only that the waiver be "explicit." As the waiver at issue here demonstrates, a waiver of sovereign immunity can be explicit even when other provisions of the document are applicable only to specific, non-United States jurisdictions.

Accordingly, because we find that Argentina explicitly waived its sovereign immunity to suits in the United States relating to the German bonds, we reverse the district court's dismissal of CVI's German bond claims.[5] In addition, because it is clear from the transcript of the proceeding before the district court that CVI's motion for summary judgment on the German bond-related claims was denied only because the district court dismissed those claims, we vacate the denial of CVI's summary judgment motion, so that the district court can consider, in the first instance, whether or not summary judgment would be appropriate on those claims.

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[5] Because we find an explicit waiver of immunity, we do not reach CVI's arguments that other FSIA exceptions to sovereign immunity apply as well.

B. Prejudgment Interest

Under New York C.P.L.R. § 5001, a creditor is entitled to prejudgment interest on all sums due, as of the date they became due. N.Y. C.P.L.R. § 5001; *see also Spodek v. Park Prop. Dev. Assocs.*, 759 N.E.2d 760, 762 (N.Y. 2001) (holding that "CPLR 5001(a) permits a creditor to recover prejudgment interest on unpaid interest and principal payments awarded from the date each payment became due"). While awards of interest are generally discretionary, "New York law does not permit the trial court to exercise any discretion where a party is entitled to [prejudgment interest] as a matter of right." *New Eng. Ins. Co. v. Healthcare Underwriters Mut. Ins. Co.*, 352 F.3d 599, 602-03 (2d Cir. 2003). We review the interpretation of a contract, which is a legal question, de novo. *Phillips v. Audio Active Ltd.*, 494 F.3d 378, 384 (2d Cir. 2007).

The parties agree that the district court correctly awarded CVI statutory prejudgment interest on the contractual interest payments that Argentina failed to make prior to acceleration of the principal of CVI's U.S. bonds, as well as on the entire amount of the principal starting on the date of acceleration. However, CVI argues that contractual interest payments continued to come due after acceleration, and therefore that the district court should have awarded CVI statutory prejudgment interest on the post-acceleration, unpaid interest payments.

The normal consequence of acceleration is that interest payments that would have been due in the future are no longer due, because, after acceleration, the entire principal is immediately due and owing; in other words, future interest payments are "unearned" because the creditor is no longer loaning the debtor the principal. *See, e.g., Aardwoolf Corp. v. Nelson Capital Corp.*, 861 F.2d 46, 47 (2d Cir. 1988) ("New York legislation and judicial pronouncements demonstrate a consistent intent to deny a creditor the right to charge or retain interest that is unearned."); *Atlas Fin. Corp. v. Ezrine*, 345 N.Y.S.2d 36, 38-39 (App. Div. 1973) (stating the "equitable principle that the unearned part of the interest must be deducted [from the amount due] upon acceleration," and reasoning in part that "by acceleration of payments upon default the principal sum ceased to be at risk some years prior to the time contemplated by the contract" (internal quotation marks omitted)); *Bostwick-Westbury Corp. v. Commercial Trading Co.*, 404 N.Y.S.2d 968, 973 (Civ. Ct. 1978) (stating that at acceleration, "indebtedness encompassed the unpaid balance of the principal and the matured interest at the time of default and does not include any unearned future interest"); *see also In re LHD Realty Corp.*, 726 F.2d 327, 331 (7th Cir. 1984) ("[A] lender may abandon or waive its claim to interest payable over a period of years . . . . [T]he lender, by its acts, may establish that it prefers accelerated payment to the opportunity to earn interest over a period of years. . . . [The lender] has voluntarily waived the unpaid interest in the

expectation of accelerated payment of the remaining principal.").

The FAA that governs the U.S. bonds at issue here contains nothing to demonstrate that the parties intended to displace the normal meaning of acceleration with a concept of acceleration that allows interest to continue to come due after the principal is accelerated. CVI argues that the FAA does mandate that interest payments continue to be due after acceleration because the FAA provides that Argentina will "pay interest" on the principal "until the principal . . . is paid." That, however, is merely a truism that is not specific enough to alter the traditional concept of acceleration. In the absence of ambiguity or a provision in the FAA specifying otherwise, acceleration should be given its normal meaning. *Alexander & Alexander Servs., Inc. v. These Certain Underwriters at Lloyd's, London*, 136 F.3d 82, 86 (2d Cir. 1998) ("If the court finds that the contract is not ambiguous it should assign the plain and ordinary meaning to each term . . . ."). To hold otherwise would allow CVI to recover interest twice on the same principal—once as statutory prejudgment interest after the date of acceleration and once as interest payments that came due after acceleration. Such an unusual result should not be inferred in the absence of clear intent in the FAA.

CONCLUSION

For the foregoing reasons, we **VACATE** the portion of the judgment of the district court dismissing the claims related to the German bonds and denying summary judgment on those claims, **AFFIRM** the remainder of the judgment, and **REMAND** for further proceedings consistent with this opinion.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the ___ day of April, two thousand and nine,

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Docket No. 07-1551-cv
FILED APRIL 9, 2009
[OVAL STAMP]

Capital Ventures International,

Plaintiff-Appellant,

v.

Republic of Argentina,

Defendant-Appellee.

ORDER

Appellant Capital Ventures International having filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc*, and the panel that determined the appeal having considered the request for panel rehearing, and the active mem-

bers of the Court having considered the request for rehearing *en banc*,

IT IS HEREBY ORDERED that the petition is denied.

For the Court:
Catherine O'Hagan Wolfe, Clerk

By: /s/ FRANK PEREZ
Frank Perez, Deputy Clerk

[Cover]

In The Matter Of:

CAPITAL VENTURES v.
REPUBLIC OF ARGENTINA

February 15, 2007

ARGUMENT

Original File 72f6capa.txt, Pages 1-39
Word Index included with this Min-U-Script®

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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06 CIV 207 (TPG)
New York, N.Y.
February 15, 2007
5:00 p.m.

CAPITAL VENTURES INTERNATIONAL,

Plaintiff,

v.

REPUBLIC OF ARGENTINA,

Defendant.

Before:

HON. THOMAS P. GRIESA,
District Judge

APPEARANCES

WOLF BLOCK
Attorneys for Plaintiff CVI
By: KENNETH G. ROBERTS
JENNIFER F. BELTRAMI

CLEARY GOTTLIEB STEEN & HAMILTON, LLP
Attorneys for Defendant
Republic of Argentin[a]
By: CARMINE D. BOCCUZZI
AMY CHUNG
CHRISTOPHER MOORE

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(In open court; case called)

THE COURT: What do we need to cover today, please?

MR. ROBERTS: Thank you, your Honor. Kenneth Roberts for CVI Taking things one at a time, the first thing we would like to address is the discovery issue regarding the historical collateral reports. We have tried and made some progress with counsel as your Honor directed to try and resolve the issue, but we are still stuck.

THE COURT: What is the sticking?

MR. ROBERTS: The sticking is we need the reports back from inception of the binding issuance because we believe that the historical reports—

THE COURT: That would go back to how far?

MR. ROBERTS: To 1993 So far they are willing to give us most of the reports to 2001. There were several exchange offers between '93 and '01 which will affect the calculation Mr Meyer can explain to your Honor exactly why we believe that these historical reports will show further corrections.

THE COURT: Now, the historical reports from the Federal Reserve?

MR. ROBERTS: Correct.

THE COURT: What do you mean by historical reports?

MR. ROBERTS: They have issued monthly reports.

THE COURT: They issued them to whom?

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MR. ROBERTS: Argentina.

THE COURT: Republic?

MR. ROBERTS: Yes.

THE COURT: What do they show?

MR. ROBERTS: Each month they show the amount of collateral in the interest collateral account. They show any disbursements from those accounts, they show the secured interest obligations and the maximum level for each month.

There is something that has happened since the last time we met just in the last month or so, actually in the last week. Some Brady bondholders have now requested payment from the interest collateral accounts of whatever they are entitled to. So it is no longer an academic issue where the secured interest obligations are because there is no dispute between the two parties that if the Brady bondholders are entitled to anything, they are only entitled up to the secured interested obligation. That is not disputed. But we do dispute, A, they are entitled to anything, and B, the parties are in dispute as to what the secured interest obligation is, where does it lie. That's why we need these reports because otherwise if your Honor were to allow the Brady bondholders to take the interest collateral out—

THE COURT: The money is frozen right now.

MR. ROBERTS: The moneys are frozen night now. It would take a further order of your Honor to release these

[Page 4]

moneys to these people. So it is not something that is an emergency. It is something that brings it into reality as opposed to an academic issue, what is the secured interest obligation. It is now real life issue.

THE COURT: Go back. Start again. What do the monthly reports show?

MR. ROBERTS: They will show what the New York Fed believed were the secured interest obligations for each of those months. They have already corrected themselves once recently and we believe that the nature of that mistake that they corrected indicates that they made that same mistake historically. Conceptually I can tell you—the details are very difficult, but the concept is when there is a redemption of bonds do you decrease the collateral dollar for dollar—the secured interest obligation dollar for dollar as to what was paid out or do you decrease it proportionately on a percentage basis. The mistake that they corrected already, they had seen that they had done it on a proportionate percentage basis as opposed to dollar for dollar and they have corrected that from about—

THE COURT: They saw what?

MR. ROBERTS: They saw that in—was it 2005?—that saw in August 2005 that they wrongly calculated the secured interest obligation because they used a percentage formula rather than a dollar for dollar formula to calculate the

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amount. That is exactly the kind of mistake that we think they have made in 1993 to date which would further affect the secured interest obligation

today. These are reports that at a touch of a computer button can be printed and we are willing to do all the work. All we need to do is see the monthly reports that have already been created and then we will be able to present the exact accurate figure for today.

THE COURT: Refresh my memory, you have an attachment on what?

MR. ROBERTS: We have an attachment on the entire account. Of course, your Honor has ruled nothing can be released or seized without your further order.

THE COURT: What account is this?

MR. ROBERTS: Today we are talking about the interest collateral account, which has about five million dollars in it today. Argentina and the New York Fed say that about three and a half million of that is below the secured interest obligation, which could be conceivably released, but we believe—

THE COURT: It is below?

MR. ROBERTS: Their figures today, the secured interest obligation is at about three and a half million of the five. So that according to their figures three and a half million could be accessible by an Argentina on behalf of the Brady bondholders.

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THE COURT: Do I read you right that three and a half million dollars is security?

MR. ROBERTS: The entire five million is security, yes.

THE COURT: Three and a half is this secured interest obligation?

MR. ROBERTS: It is the highest amount possible of the secured interest obligation.

THE COURT: The secured interest obligation, I don't remember this very well. I am sorry. Is that something that you claim is or is not subject to your attachment, the secured interest obligation.

MR. ROBERTS: It is subject to our attachment but to the extent it might be available to the Brady bondholders, we would be junior.

THE COURT: Now, anything above that you say you are entitled to?

MR. ROBERTS: Yes. But your Honor ruled that this moment because Argentina is in default and Argentina cannot get the access, your Honor ruled that this moment we cannot get it either. It is there. The access is there and it is definitely not available to the Brady bondholders.

THE COURT: What is your objective?

MR. ROBERTS: Our objective is to show that the secured interest obligation rather than being at three and a

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half million today with think could actually be zero to the entire amount, the entire five million dollars would not be available to the Brady bondholders. If the secured interest obligation—

THE COURT: Is this the case that went to up the Court of Appeals and then came back.

MR. ROBERTS: Yes

THE COURT: Is this the one that you won in the Court of Appeals?

MR. ROBERTS: Well, we won on one particular issue, which was simply to get the attachment.

THE COURT: I had vacated it and the Court of Appeals reversed me; is that right?

MR. ROBERTS: Yes. And said that we were entitled to the attachment that now exists

THE COURT: Okay. There are many cases.

MR. ROBERTS: I know.

THE COURT: What is wrong with giving them the records they want, Mr. Boccuzzi?

MR. BOCCUZZI: Your Honor, I am surprised we started with this one. There are four other motions in this case pending before your Honor. On this discovery question you had asked us to work together and I had thought we made progress. Mr. Roberts started off asking for 14 years of reports. We had offered him to go back four years and in addition to give

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reports for two months of 2001 around the time when there was a redemption of collateral and that would let him test his theory.

Ultimately this is irrelevant because what is in the reports is put their [there] by the Fed and it is there at their discretion. The reports say what they say. So it seems like a lot of ancient history and it is unnecessary and legally irrelevant. We were prepared and we were working with each other and sent them an offer this morning and I frankly thought we had made progress and if he gets the reports and he wants more, we can talk about that. I thought we were here to talk about actual live motions as opposed to what was being worked out with the parties.

THE COURT: Look, I have no knowledge really of what use these can be, but I don't see any reason to have more negotiation. If the reports are available and can be produced, produce them or get the Fed to produce them. I wouldn't negotiate anymore and I wouldn't have anymore discussion with the Court and that is the Court's order.

Let's go to the next motion. What is the next motion?

MR. BOCCUZZI: The next motion is our motion to dismiss the complaint to the extent it is seeking recovery on German bonds.

THE COURT: To what?

MR. BOCCUZZI: Seek recovery on German bonds.

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THE COURT: Your motion is what?

MR. BOCCUZZI: To dismiss.

THE COURT: Why don't we have the argument on that.

MR. BOCCUZZI: Ms. Chung will be presenting the arguments on that.

THE COURT: Very good.

MS. CHUNG: May it please the Court, Amy Chung for the Republic of Argentina. The Republic has moved to dismissed the German bond claims because CVI has brought suit in the wrong court. The German bonds are entirely German instruments. Their terms are in German. They are governed by German law. The place of performance for the bonds is in Germany. The Republic therefore waived its immunity to sue in Germany.

THE COURT: Does the Republic have an expressed waiver of suit in Germany.

MS. CHUNG: Yes. The Re[p]ublic has waived its immunity to sue in certain jurisdictions, usually correlated with where the bonds are issued. For example, the German bonds were issued in Germany and the Republic waived its sovereign immunity to sue in Germany.

THE COURT: It didn't provide any waivers as far as New York, right?

MS. CHUNG: No These bonds have nothing to do with—

THE COURT: Mr. Roberts, what about that?

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MR. ROBERTS: Is it just wrong, your Honor. I can read it to you. It says to the extent that the Re[p]ublic has or hereafter may acquire any immunity from jurisdiction of any court or from any legal process with respect to itself or its revenues, the Republic hereby irrevocably waives such immunity. There is no geographic limitation. What she is talking about, the geographic limitation was a non-exclusive. It says, The Re[p]ublic hereby submits to the non-exclusive jurisdiction of Germany and Buenos Aires. Submitting to non-exclusive jurisdiction has nothing to do with the general broad waiver of immunity wherever. We are here properly. They are not moving to dismiss for lack of jurisdiction. The immunity is not limited geographically. It is Exhibit B to the declaration of Eric Meyer dated September 15, 2006.

THE COURT: What page on that?

MR. ROBERTS: Page 14 of Exhibit B.

THE COURT: I have it. That is what I thought. I thought it was a very broad waiver and not limited to Germany.

MS. CHUNG: Your Honor, Mr. Roberts is putting the cart before the horse. You have to look at the first waiver and then look at the second waiver. The situation is very similar, it is almost identical to the Lavaggi action where your Honor dismissed claims based on a Swiss bond that had identical provisions, where the Reb[p]ublic waives immunity to jurisdiction in Geneva and in Buenos Aires and then it provided

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after that that should a judgment be entered in those actions that the Re[p]ublic's immuntty would be waived in other jurisdictions.

THE COURT: Ju[s]t a minute. I am sorry I don't remember the Swiss case, but I don't understand how get around the adjective non-exclusive and I don't understand how you get around the second sentence. The second sentence is not talking about enforcement of a judgment. The second sentence is talking about maintenance of such suit or action or such proceeding and the antecedent of such that such action or proceeding is in the first sentence.

The second sentence, The Re[p]ublic hereby irrevocably waives to the fullest extent it may effectively do so the defense of an inconvenient forum to the maintenance of such suit or action or such proceeding and any present or future objection to such suit, action or proceeding whether on the grounds of venue, residence or domicile.

MR. BOCCUZZI: Your Honor, that simply means that in a suit that occurs either in Buenos Aires or Frankfurt the Re[p]ublic has contractually bound itself not to argue inconvenient forum and all the other points.

THE COURT: That is not what the second sentence says.

MR. BOCCUZZI: Yes, it does, your Honor.

THE COURT: Does it?

MR. BOCCUZZI: Yes. It says the Re[p]ublic hereby

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irrevocably waives to the fullest extent and may effectively do so the defense—and it goes—of an inconvenient forum to the maintenance of such suit or action or such proceeding. So "such" goes back to the proceedings that would be picked up in the first sentence, submission or waiver of immunity, which is to Buenos Aires or to Frankfurt court.

THE COURT: Okay.

MR. BOCCUZZI: This does follow the language that was in the Swiss bond that was deal with b your Honor in the Lavaggi case. You need a specific submission to jurisdiction to New York court for us to be here that isn't here.

THE COURT: Maybe I didn't read the second sentence carefully enough.

Why is the language adjective non-exclusive?

MR. BOCCUZZI: Because, your Honor, if it said exclusive jurisdiction then that means that's the only place it could be sued. Here it says non-exclusive that means there is some other grounds under which they had given up their immunity in some other jurisdiction, none of which exist here, you can

take them into another court. There is no commercial activity going on in connection with these bonds which are entirely German instruments and that is what Lavaggi plaintiff argued as well, that under 1605(a)(2) you would be able to bring them.

Under 1605(a)(1) where the question is did they submit to the jurisdiction of this court, this is not a submission to

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jurisdiction in this court. The non-exclusive language does not help the plaintiffs here because there is no commercial activity in connection with these bonds.

Here is an example of the bond. I would add, your Honor, these plaintiffs are actually suing on some of these German bonds in Germany so that just shows the right place to bring these lawsuits. This one for example, is a bear bond just like the old days. It is all in German and there are coupons on the back that you would clip for your interest. So just like in the Lavaggi case where you had a Swiss instrument and your Honor said no subject matter jurisdiction, the same analysis applies here.

I can hand up the Lavaggi decision to your Honor if you want it.

THE COURT: Sure.

MR. BOCCUZZI: I think it is a pretty straightforward issue. I would like you to look at Lavaggi because in Lavaggi there was no waiver of immunity. Your Honor said the Re[p]ublic has not explicitly waived its immunity. Here, if you look at Subsection 4, the Re[p]ublic specifically expressly waived its immunity from any court.

MS. CHUNG: I have copies of the bond.

THE COURT: Does it or does it not have the same language?

MS. CHUNG: It has the same language.

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MR. ROBERTS: May I see it. Where is it?

MS. CHUNG: Page 11.

THE COURT: Can I see the bond?

MR. BOCCUZZI: I will bring it up your Honor.

THE COURT: It is exactly the same.

MS. CHUNG: Your Honor, you held the Lavaggi that there was no explicit waiver The language is the same for the German bond here. There is no jurisdiction in this court.

MR. ROBERTS: Your Honor, I wasn't part of the Lavaggi case. It is certainly was not in the reported decision.

THE COURT: I agree with you.

MR. ROBERTS: The fact is, your Honor, if you look at Subsection 4 whether it is in Lavaggi or not, and I don't think your Honor relied on that provision in that section, but this Subsection 4 could not be more plain. It is an absolute expressed unlimited immunity waiver. This non-exclusive, it has nothing to do with it.

MS. CHUNG: Your Honor—

MR. ROBERTS: Why is there no waiver of immunity in Subsection 3? It doesn't talk about immunity in 3. If it wanted to limit the waiver to Germany and Buenos Aires, it would have done it. It says, Any court. How can you get around that, any court.

MS. CHUNG: Your Honor, in terms—

THE COURT: Wait a minute. You are talking about

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Subsection 4?

MR. ROBERTS: Yes, your Honor.

THE COURT: Not Subsection 3.

MR. ROBERTS: Exactly. That is the waiver. Subsection 3 is not even the immunity waiver section.

MR. BOCCUZZI: Of course it is. It is submission to jurisdiction.

MR. ROBERTS: But it doesn't talk about immunity. When you talk about immunity, they use the word any—any court.

MS. CHUNG: Your Honor, may I?

THE COURT: Yes.

MS. CHUNG: Subsection 3 submits the Re[p]ublic to jurisdiction. That is a waiver of immunity. The last sentence of that subsection says that once a final judgment has been entered any court in Frankfurt or in Buenos Aires that that judgment may then be enforced in other jurisdictions. Subsection 4 follows Subsection 3 and says where else the Re[p]ublic has waived immunity. This is not unusual.

The same thing happened, your Honor, may recall in the context of the MNL action where the Re[p]ublic will waive its immunity for the initial suit in certain junisdictions. The jurisdictions where it can control where it is sued. It will intentionally submit to jurisdiction in Germany for German bonds and in New York for New York bonds.

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Once a plaintiff has received a judgment, it can then try to execute that judgment anywhere around the world. That is what the Subsection 4 is related to.

MR. ROBERTS: Is that why it says attachment prior to judgment in Subsection 4?

MS. CHUNG: Your Honor, a foreign judgment must be recognized by a court before any attachment can happen. You can't walk into a New York court with a German judgment and say attach the property that is in New York. You first have to have that judgment recognized.

THE COURT: Wait a minute.

MR. ROBERTS: Your Honor, I just saw something in your decision in the Lavaggi decision that is very relevant.

THE COURT: Okay.

MR. ROBERTS: In the record before your Honor, you didn't have this prospectus. You didn't even have it before you. That is why it wasn't part of your decision. Your decision says, The current record does not contain any details about the Euro bonds prospectus.

MS. CHUNG: Your Honor, that was about the German Euro bond not the Swiss bond. It is attached to the Boccuzzi declaration that was submitted.

MR. BOCCUZZI: Your Honor, I would like to defend your Honor's decision. I thought I had a great precedent walking in here. Of course, your Honor had the relevant documents

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relating to the Swiss bond and the bonds that you decided on. There is a dispute over what specific German bond, I think was being discussed which is another bond; but the point was in the end you settled on the language we put before you that is exactly the same language as the bond—the language of the bond that Mr Roberts has here, and your Honor decided there is no submission to jurisdiction And I would add, your Honor was not making new law, you were not going out on a limb. Other cases in this district, which were cited in the briefs and the Supreme Court case of—

MS. CHUNG: Argentine Republic v. Amerada Hess.

MR. BOCCUZZI: —Argentine Republic v. Amerada Hess, which requires that submissions to jurisdiction someone is going to hail the sovereign into a port in New York at least reference New York, which this doesn't do.

The general language they keep citing to, which talks about enforcement, has nothing to do with a 1605(a)(1) submission to jurisdiction under the foreign sovereign immunity act. They are trying to make these distinctions between this case and your decision in Lavaggi, and there are just no such distinctions that can be made to support a different outcome here.

MS. CHUNG: Your Honor, I would also like to add that under the case law you cannot have a global waiver. Explicit waivers of sovereign immunity are construed very narrowly in

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favor of the sovereign. The courts have held that you need the words in the United States or some indication that the sovereign intended to be sued in the United States.

I would refer the Court to the Commercial Corporation Sovrybflot case and also the Eaglet Corporation Limited case. Those are Southern District cases that state that there was no waiver because the words in the United States were not in that waiver. I would also refer the Court to the Proyecfin de Venezuela case where the Second Circuit held that a waiver that mentioned both the words "New York" and "submission to jurisdiction" under the Foreign Sovereign Immunities Act was enough to waive immunity.

In this case we do not have either of those There is no reference to New York. There is no reference to the FSIA. All we have is an explicit waiver in Frankfurt and in Buenos Aires.

MR. ROBERTS: I can address those cases, your Honor. We did in our reply brief. They are not applicable in this situation I think it is determinative. The third paragraph is non-exclusive. It has a plain meaning. That means you can bring it anywhere—

MS. CHUNG: Your Honor—

MR. ROBERTS: Excuse me.

And the fourth paragraph says any court. There is a plain meaning there. There is no limitation.

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THE COURT: It seems to me that in the Lavaggi case I certainly mentioned this language. It is a

very similar language about jurisdiction And I say that the prospectus states that the Re[p]ublic submits to the non-exclusive jurisdiction of the above mentioned Swiss courts and any federal court sitting in the city of Buenos Aires.

I really don't rely on that in dealing with the Swiss bonds. I hold that there really isn't any waiver of sovereign immunity. Isn't that what I did? I don't rely on that particular phrase about Swiss courts in Buenos Aires. Look at page 7 of the decision.

MS. CHUNG: Your Honor, but on page 6 you specifically held the Re[p]ublic has not explicitly waived its immunity for claims involving the Euro bond or the Swiss bond.

THE COURT: It is a question of the ground on which I held that. What was the ground?

MR. BOCCUZZI: The ground I think, your Honor, was—

THE COURT: It had nothing to do with that phrase about Swiss courts in Buenos Aires.

MR. BOCCUZZI: It was, if you read all the language together, there was no waiver of immunity.

THE COURT: I didn't read all the language together. The bottom of page 6, I am not talking about the place. I am talking about the general lack of a waiver of sovereign immunity. Isn't that correct?

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MS. CHUNG: That's correct, your Honor.

THE COURT: That's correct.

MR. BOCCUZZI: But that conclusion follows from here as well

THE COURT: No, it doesn't

MR. BOCCUZZI: Because you had the same language in both bonds and the language in paragraph four is not a waiver of sovereign immunity in the United States.

THE COURT: I know there was not a waiver of sovereign immunity anywhere in Lavaggi, didn't I?

MR. BOCCUZZI: No. I don't think you did, your Honor.

THE COURT: What am I saying at pages 6 and 7.

MS. CHUNG: I think what you are saying is the Re[p]ublic has not waived its immunity in the United States. Therefore, in order to find jurisdiction—

THE COURT: Where do I say that? Where do I say that?

MS. CHUNG: That would be the only reason why you would go on to the commercial activity exception.

MR. BOCCUZZI: Right. Because the analysis is: Is there a waiver in that 1605(a)(1) and finding there was no such—

THE COURT: Look, what is the issues before me now on this motion?

MR. BOCCUZZI: On this motion, your Honor?

THE COURT: Is there an issue about commercial

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activity?

MR. ROBERTS: No.

MR. BOCCUZZI: They did argue in their brief, did they not, 1605(a)(2)?

MS. CHUNG: Both issues are before the Court in order to find jurisdiction. Either there would have

to be an explicit waiver there would have to be or commercial activity exception.

MR. BOCCUZZI: Both Lavaggi and this motion argue that your Honor had jurisdiction either under 1605(a)(1), which is there is an explicit waiver of immunity, and if that wasn't the case then under 1605(a)(2) because there was commercial activity in the United States.

Your Honor found Lavaggi presented with the same language that there was no explicit waiver to immunity to claim to the United States and then went on to deal with the 1605(a)(2) issue.

THE COURT: Well, I wish I would have said that more clearly. I don't really find that in the decision.

MR. BOCCUZZI: I think your Honor at the time, you had to do that analysis to reach that. I think your Honor again was correct based on the fact that the case law requires a explicit jurisdiction—explicit waiver the jurisdiction in New York that talks about New York that. That is not here.

Also, your Honor, as I said before, these plaintiffs

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and many other plaintiffs are suing on these bonds in Germany as it is. They recognize that. Other folks have dropped their claims based on the same language and the German courts are dealing with them. I would think as a matter of good order that is a point, but also it is just a fundamental subject jurisdiction issue your Honor. You need a submission of jurisdiction which is a waiver to say in New York or under the FSIA and that language is not here.

MR. ROBERTS: That is, A, not the law, and B, I don't know if anybody argued in Lavaggi what we are arguing Your Honor certainly did not state it in his decision. No where in your decision do you quote this language "any court." It may have been in the document before.

THE COURT: Any court?

MR. ROBERTS: In 4. In Lavaggi it doesn't even say any court. In 4 it says, From jurisdiction of any court. That is not in the Lavaggi decision. In Lavaggi it does not say any court. That is the difference.

MR. BOCCUZZI: Paragraph four, any court refers to immunity in connection with execution, your Honor. It follows from 3.

MR. ROBERTS: There is no any court language in Lavaggi. That is the difference. We have any court here. It is plain, simple. Any court means any court

THE COURT: I think that the matter should be looked

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at afresh. And Lavaggi in my view is not as clear as I would like to have it about the grounds on which I decided. But looking at it afresh, it seems to me, and I would hold, that the Court should give sensible effect to the instrument which has been presented and that is Section 13, Subsection 3. And it says that the Re[p]ublic hereby irrevocably submits to the non-exclusive junisdiction of the District Court in Frankfurt and any federal court sitting in the city of Buenos Aires as well as any appellate court of any thereof in any suit, action or proceeding against it arising out of or relating to these

bonds. The submission to jurisdiction is to the jurisdiction in Frankfurt or in the city of Buenos Aires.

Now, Subsection 3 goes on to say, The Re[p]ublic hereby irrevocably waives to the fullest extent is may effectively do so the defense of an inconvenient forum to the maintenance of such suit or action or such proceeding and any present or future objection to such suit, action or proceeding whether on the grounds of venue, residence or domicile. I would conclude that the reference to such suit or action or such proceeding is—the antecedent to that is those words in the first sentence in which Frankfurt and Buenos Aires are chosen, because that first sentence has the phrase any suit, action or proceeding.

So the second sentence is not an unlimited way of permission to select any place in the world for jurisdiction.

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The third sentence says, The Re[p]ublic agrees that a final judgment in any such suit, action or proceeding in the courts mentioned above shall be conclusive and may be enforced in other jurisdictions by suit or on the judgment or any other method provided by law. This third sentence enforces the interpretation that this is a limited provision. This Subsection 3 is limited because surely the third sentence is talking about in the courts mentioned above and that is the courts of Frankfurt or the city of Buenos Aires.

Now, we come to Subsection 4 of this Section 13 and the plaintiff here is certainly right in saying

that it has some very broad language. And it reads: To the extent that the Re[p]ublic has or hereafter may acquire any immunity, sovereign or otherwise, from jurisdiction of any court or from any legal process, whether through service or notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise with respect to itself or its revenues, assets or properties, the Re[p]ublic hereby irrevocably waives such immunity in respect to its obligations under the bonds to the extent it is permitted to do so under applicable law.

Now, the defense argues that this is simply a follow-up to the last sentence in Subsection 3 about enforcing judgments It does not literally read with that limitation, but I would say that whatever it means it should not be read as reading out of this instrument the reference to Frankfurt and

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the city of Buenos Aires. I believe that there is case law which would support the idea that where there is an expressed grant of jurisdiction in specific places that a general waiver of sovereign immunity does not mean that that suit can be brought any place in the world. So that is what I am holding.

Now, is there any other ground, aside from reliance on this Section 13 in Subsections 3 and 4, is there any other argument in support of jurisdiction in New York?

MR. ROBERTS: Yes. The word non-exclusive in 3. It says non-exclusive when it talking about Germany and Buenos Aires. Non-exclusive. Everything that follows from there is just saying that we won't to object if you bring it in Frankfurt or Buenos

Aires. That is all it is saying, but it is it not limiting anyone from bringing it anywhere which is why 4 says any court.

MR. BOCCUZZI: Your Honor, that is just an argument that they can try to make the case that under 1605(a)(2) that that the Re[p]ublic would be subject to jurisdictions here if there was commercial activity here that that could be used. 1605(a)(2) is not available here because these bonds, as it is clear from Subsection 2 of paragraph 13 were performable in Germany, they are German denominated instruments. And so as in Lavaggi where you said 1605(2) does not get you junisdiction of this court, it is the same analysis here. So that term non-exclusive does not save the case for the plaintiffs

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MS. CHUNG: Your Honor, I also would like to add the word non-exclusive is not dispositive if you look at the Commercial Corporation Sovrybflot.

THE COURT: The motion to dismiss the claim based on the German bonds is granted.

What other motions do we have?

MR. BOCCUZZI: I think, your Honor, that takes care of the 54(b) part. This case that we moved to dismiss the German claims, there are other bonds where there was jurisdiction. Since your Honor hadn't decided the motion to dismiss, there was a question whether there should have a 54(b) judgment. Since those bonds were dismissed out of the case, the 54(b) application is now mooted. So that is taken care of.

The other question was the form of the judgment. And that is the question of whether plaintiffs are

entitled to—it is a question of interest upon interest after an acceleration of the bonds. Basically what the plaintiffs are asking for is a judgment that is different from the 36 other judgments that your Honor has entered.

The way the law works is if the bonds, the interest payments are coming due and an interest payment is missed, than interest is owed when a lawsuit is bought on the missed interest pavement. Once plaintiff accelerates the bond then what is due is the principal amount and an interest on that principal amount as well as any interest on past due interest

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payments. That is how all the judgments in these cases have been structured and they all read that way.

What plaintiffs would like to do in a departure from all the other cases, and I think to get another million or so dollars, is to say that they get interest on interest payments that would have been due after the acceleration came in. And there is just no authority or support for that position. I think again this is a matter that has been dealt with, your Honor, not just once, 36 times. We have cited the case law in our letters and I think it is straightforward and we can take care of it and that would finalize the term of the judgment in this particular CVI.

MR. ROBERTS: Your Honor, they don't cite any case law. I don't know what the other 36 cases are.

THE COURT: What is it you are asking for?

MR. ROBERTS: We are asking for something very simple. Very simple. Statutory prejudgment interest on the contractual interest, which they admit is due, until judgment is entered. Not in the future. They admit that we get contractual interest until judgment is entered. Obviously the principal was accelerated and we get prejudgment interest on the principal. The case law that we submitted is clear that you get prejudgment interest, the statutory interest, on principal and interest until judgment is entered. If judgment was entered today—

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THE COURT: You are talking about the interest that is due on the bond

MR. ROBERTS: Correct.

THE COURT: Not prejudgment interest awarded as a matter of law?

MR. ROBERTS: Let me say what we agree, what the parties agree. The parties agree that the interest under the bond accrues—continues to accrue after acceleration until the day of judgment. We all agree on that. We all agree that we had prejudgment interest on the principal amount, statutory prejudgment interest. Statutory prejudgment interest on the principal amount. The only dispute is statutory prejudgment interest on the contractual interest which has accrued from acceleration to date If judgment was entered today, we are still entitled to statutory pre—

THE COURT: There is a certain amount of interest due?

MR. ROBERTS: That's right. Otherwise, all they are having to do is pay precisely what they owed

under the contract with no penalty, which is what prejudgment interest is all about. They have held onto the money. The point of prejudgment statutory prejudgment interest is to make them pay for holding onto that money. We haven't had the money, therefore we get the statutory—

THE COURT: Frankly I don't understand why there isn't interest due on the entire obligation. The entire contractual

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obligation. The contractual obligation includes principal. When I talk about prejudgment interest, I am not talking about contractual interest.

MR. ROBERTS: Correct.

THE COURT: I am talking about interest that would be awarded because of the law.

MR. ROBERTS: Correct.

THE COURT: Now, when did the prejudgment interest on principal start running?

MR. ROBERTS: At acceleration.

THE COURT: At acceleration. That was a contractual obligation.

MR. ROBERTS: Correct.

THE COURT: It wasn't paid and so the prejudgment interest starts running.

MR. ROBERTS: Right.

THE COURT: The contractual obligation, does the contract here provide for interest following acceleration?

MR. ROBERTS: It doesn't address that particularly but it does say interest until the principal is paid in full. It only makes sense that obviously if they

haven't paid the principal, acceleration is meaningless.

THE COURT: Well, it is a little difficult. Under the contract, obviously interest accrued until acceleration. I am putting aside whether it kept accruing, but it accrued until

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acceleration

MR. ROBERTS: And they have agreed on prejudgment interest on the contractual interest until acceleration. There is no difference. You get contractual interest until the obligation is paid.

THE COURT: Not necessarily.

MR. ROBERTS: It says you get interest until principal is paid.

THE COURT: Acceleration is an event that is based on a default.

I just have a very simple question: Does the contract literally say that the contractual interest runs on the accelerated principal?

MR. ROBERTS: It does not expressly say that.

THE COURT: It doesn't say it then if it doesn't expressly say it.

MR. ROBERTS: That's correct, your Honor. It doesn't say it.

THE COURT: The idea that interest runs until the principal is paid that is a truism. Of course interest runs assuming in the normal course there is no default. It runs until it is paid. If there is no contractual obligation to pay interest on an accelerated principal, there is no such contractual obligation and therefore all you got is the—

MR. ROBERTS: But they are not disputing that

obligation. They have agreed to pay us contractual interest until judgment.

MR. BOCCUZZI: No. We have agreed—

THE COURT: Have they done that?

MR. ROBERTS: They have agreed.

MR. BOCCUZZI: When you say "they," are you talking about the Re[p]ublic or your opposing counsel?

MR. ROBERTS: I am talking what we have agreed on among counsel and it is not in dispute that contractual interest continues after—

THE COURT: What is the rate of contractual interest?

MR. ROBERTS: Various rates.

MR. BOCCUZZI: No. I think the point here that is getting confused is under New York law if there is an interest rate just that governs the contract—here this is, I don't know, an 11 percent bond, say—then the prejudgment interest is not the default 9 percent New York State interest rate. It is the contractual rate. That is just the statutory look-through.

So the interest they are getting is that amount on the accelerated principal. They want additional interest on top of that. Mr. Roberts said it is a penalty. The point of prejudgment interest is not to penalize anyone. It is to make him whole. He is being made whole for the missed interest payments that were missed leading up to acceleration. That is

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part of his judgment, plus interest on those amounts. Then there is the accelerated principal amount. Then there is the statutory interest that accrues on top of that amount, which is the contractual rate.

MR. ROBERTS: Your Honor asked a very simple question and they have answered it in their papers to your Honor. Does the contractual interest continue to accrue after acceleration, and they have said yes.

THE COURT: What Mr. Boccuzzi is saying is that he is using the amount or the rate, but he is not to bring—I don't know whether he has agreed or not—he is saying now that he has not agreed that contractual interest, interest according to the contract, continues to run after acceleration.

MR. ROBERTS: That is in their papers. It is in their papers that the contractual interest continues to run.

MR. MOORE: I think we are talking past each other. I think I know what your Honor's question is, I know what Mr. Roberts concern is, and I think I can resolve it if you give my one second. That is the issue really here is what interest rate should apply to the accelerated principal amount. We agree that the contractual rate should apply.

THE COURT: That isn't the issue at all. There will come a day when the judgment is entered. Now, that judgment will have to include the amount of the accelerated principal. It will have to include all the interest that had contractually

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run and not been paid up until the time of the acceleration. Those are obligations under the contract. Because without any doubt, the Re[p]ublic owed interest at least to the time of acceleration. So whatever that amount is, and that would be easily calculated, that is an obligation, a contractual obligation.

Now, if the contract provides that following acceleration the contractual rate of interest will continue to accrue then that is a contractual obligation. And if it provides that it will continue to accrue until the time of a judgment, then as of the time of judgment what you've got as contractual obligations is the amount of the principal, the amount of any interest that accrued prior to the acceleration, and the amount much any interest that had accrued prior to the judgment if the contract provides for that.

And then as far as prejudgment interest, I assume lawyers know how to figure prejudgment interest. You figure prejudgment interest on amounts that were due and unpaid prior to the judgment. When it comes to the principal that is easy. Because there is principal. As far as interest, to figure prejudgment interest on unpaid interest, as of a certain date there was a certain amount of unpaid interest, maybe the next month there is another amount of unpaid interest, and it keeps increasing. It is a little harder to figure prejudgment interest on unpaid interest, but it can be done.

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There is nothing impossible in the idea that the contract could say that the contractual interest at the rate provided for in the bonds keep running until the time of judgment; but if it doesn't say that, it doesn't say it.

MR. BOCCUZZI: That's right, your Honor.

THE COURT: All I want to know is if it doesn't say it then what you are left with is that you get prejudgment interest on the amount of principal running from the date of acceleration, you get prejudgment interest on unpaid interest that was due under the contract and maybe that is one of these things you have to due some fancy figuring Because it would be maybe there was an interest payment that was due and unpaid at the end of a certain quarter and another interest payment due the next quarter and so forth. Each of those gets prejudgment interest from the day that it was missed.

So nobody has cited anything in the bond or the contract or the prospectus or anything that says that there is to be interest paid on the accelerated principal.

MR. ROBERTS: It does not say that your Honor, but the contract does say interest continues to run until the principal is paid. You say that is a truism, but it is also a contractual term. How could a lender be prejudiced by accelerating and then he gets no further interest after he accelerates? That it not possible

THE COURT: As I was making the remarks I was making,

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it would be rather anomalous to simply stop the running of the contractual interest.

MR. ROBERTS: They don't say that. That is not their position. They say contractual interest continues. They are just saying we don't get statutory prejudgment interest on the—

THE COURT: Suppose somebody never sued. I mean, if you say you only get prejudgment interest, maybe they don't sue. But does interest stop running?

MR. ROBERTS: Of course not. It continues to run until it is paid or until judgment is entered.

MR. BOCCUZZI: We are giving him interest We are not giving him interest on interest. We cited the Citibank case. This was done before, your Honor, because the judgment has been entered in this way. And your Honor has been doing it correctly. The quote from the New York authority is well settled that when a contract provides for interest to be paid at a specified rate where principal is paid the contract rate of interest rather than the legal rate set forth in CPLR 5004 governs until payment of principal or until the contract is merged into a judgment.

So we are giving him exactly what your Honor sketched out in terms of missed interest payments up to acceleration. He gets those missed interest payments plus interest on those. You have your accelerated amount and then there is prejudgment

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interest in the contractual rate that runs on those.

THE COURT: The interest that was unpaid prior to acceleration, what about that?

MR. BOCCUZZI: He is getting that. Those were missed interest payments. That is sketched out in the judgment. Then the Spodac case says he gets interest on that, those missed interest.

THE COURT: He gets prejudgment interest on those missed interest payments, right?

MR. BOCCUZZI: Correct. But once acceleration happens—

THE COURT: Why does the contractual right to get interest stop at acceleration?

MR. BOCCUZZI: Because that is the way the bond instrument works. Once you have accelerated and say give me my principal now, there are no more scheduled interest payment dates after that acceleration.

MR. ROBERTS: And if they gave us the principal then, we wouldn't be here. It is because they didn't give us the principal upon acceleration that interest continues to accrue It is just so elemental, your Honor. If they paid us, of course acceleration is meaningful. If they don't pay us, acceleration is meaningless. The interest continues to accrue.

MR. BOCCUZZI: He is getting interest, but he is got getting interest on top of that interest. He wants interest on

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interest after acceleration. The law doesn't provide that. That is why we cite the Citibank case and that is how we have done it in these cases. I don't say we do it because we have done it that way, but it was briefed before and your Honor got it right

before and your Honor got it right and it is based on New York law.

It is also the fact that that is what makes him whole. Is it not a penalty. It is not interest on interest. It is interest on the accelerated amount. That is what he was due. He said, I have accelerated by bond, pay me that amount. We didn't pay that amount. He brings a lawsuit That amount is the amount being sued on and then he gets interest on it. He doesn't get interest on the interest on that.

MR. ROBERTS: They have agreed that we get prejudgment interest on the interest prior to acceleration.

THE COURT: Where have they agreed to that?

MR. ROBERTS: In writing to us and then we submitted it to your Honor.

THE COURT: Cite me their agreement.

MR. BOCCUZZI: The preacceleration interest The scheduled interest payments that were missed, we have said and this was briefed before your Honor, that they get interest on those missed interest payments. But once acceleration occurs, they don't get interest on interest payments that would have come due after acceleration because they have accelerated.

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That is the way the contract works. When you are accelerating, you say I want my principal now. We didn't give him the principal now because we defaulted and therefore the prejudgment interest that accrues is prejudgement interest on top of that accelerated amount. It is not interest on fictitious

interest payments that was hit because there is an acceleration.

MR. ROBERTS: There is no fiction. The interest continues to accrue every day after acceleration. That is not disputed. It is also not disputed that we get prejudgment interest on the contractual interest prior to acceleration. It is illogical and unfair not to continue that prejudgment interest after acceleration until judgment. It is prejudgment interest.

THE COURT: Look, you can look at it two ways, but the acceleration contemplates a right to get immediate payment of principal. The contract could or could not provide that following acceleration as long as the principal is not paid, the interest will have continued to accrue quarterly. But that would be a little bit contradictory to the idea of acceleration because the bond is immediately due. It is not due in 2013 or 2021. It is due now.

So it would be anomalous to provide for the continuation of the regular quarterly payments of interest that are due. And nobody has cited any provision in the contract

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saying that such is the case. So on balance it seems to me the proper interpretation is to not award interest where the contract doesn't provide for the interest. What is due is interest that will be awarded pursuant to law and there is such interest, but I don't think there is a contractual term which continues the contractual interest.

So my holding is that the only interest that is due is the interest that is due under the contract

and that is preacceleration. As far as postacceleration all that is due is prejudgment interest.

So to the extent that you need to enter orders based on what I ruled today, please do so. That concludes our proceedings this afternoon. Thank you.

MR. ROBERTS: Thank you, your Honor.

MR. BOCCUZZI: Thank you, your Honor.

[stamp] MEMO ENDORSED

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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05 Civ. 4085 (TPG)

CAPITAL VENTURES INTERNATIONAL,

Plaintiff,

- against -

THE REPUBLIC OF ARGENTINA,

Defendant.

NOTICE OF MOTION TO DISMISS
PURSUANT TO RULE 12(b)(1) AND 12(b)(6)

PLEASE TAKE NOTICE that upon the declaration of Jennifer L. Gorskie, dated July 28, 2005, all attached exhibits, and the accompanying Memorandum of Law, defendant will move this Court, at a date and time to be determined by this Court, pursuant to Federal Rule of Civil Procedure 12(b)(1) and 12(b)(6) for an order dismissing plaintiff's claims, and for such other relief as this Court deems just and proper; and

[HANDWRITTEN]

Motion granted to extent stated in the minutes of February 15, 2007, and otherwise denied.

/s/ Thomas P. Griesa
USDJ
2/22/07

[STAMP]
RECEIVED
AUG 1, 2005
CHAMBERS OF JUDGE GRIESA

NOTICE IS FURTHER GIVEN that responses to the Motion, if any, shall be served by hand on or before August 16, 2005 on counsel for the Republic of Argentina, Cleary Gottlieb Steen & Hamilton LLP, One Liberty Plaza, New York, New York 10006, Attention: Jonathan I. Blackman, Esq.

Dated: New York, New York
July 28, 2005

CLEARY GOTTLIEB STEEN & HAMILTON LLP
By: /s/ Carmine D. Boccuzzi
Jonathan I. Blackman (JB 3846)
Carmine D. Boccuzzi (CB 2177)

One Liberty Plaza
New York, New York 10006
(212) 225-2000

Attorneys for the Republic of Argentina

To: Kenneth G. Roberts
Wolf, Block, Schorr and Solis-Cohen LLP
250 Park Avenue
New York, NY 10177

Attorneys for Plaintiff

Offering Circular
October 30, 1997

The Republic of Argentina

DM 1,000,000,000
8% Deutsche Mark Bonds of 1997/2009
—German Security Code: 195 490—

Issue price: 102.25%
Application will be made to list the DM 1,000,000,000 8% Deutsche Mark Bonds of 1997/2009 (the "Bonds") on the Frankfurt Stock Exchange.

ABN AMRO Hoare Govett
ABN AMRO Bank (Deutschland) AG

Commerzbank
Aktiengesellschaft

Credit Suisse First Boston
Aktiengesellschaft

Deutsche Morgan Grenfell
Deutsche Bank Aktiengesellschaft

Dresdner Kleinwort Benson
Dresdner Bank Aktiengesellschaft

DG BANK
Deutsche Genossenschaftsbank

SBC Warburg
A Division of Swiss Bank Corporation

Westdeutsche Landesbank
Girozentrale

Banca Nazionale del Lavoro

Bank Brussel Lambert N.V.

Bayerische Hypotheken- und Wechsel-Bank Aktiengesellschaft

Bayerische Landesbank Girozentrale

Bayerische Vereinsbank AG

Bear, Stearns International Limited

BZW Deutschland
Branch of Barclays Bank PLC

CABOTO HOLDING SIM

CARIPLO S.p.A.

Credito Italiano

Goldman, Sachs & Co. oHG

HSBC Trinkaus
Trinkaus & Burkhardt KGaA

ING Barings

Lehman Brothers Bankhaus AG

Merrill Lynch Capital Markets Bank Limited
Frankfurt/Main Branch

J.P. Morgan GmbH

MORGAN STANLEY DEAN WITTER

Nikko Bank (Deutschland) GmbH

Salomon Brothers AG

Paribas
Banque Paribas—Zweigniederlassung
Frankfurt am Main

Société Générale S.A.

UBS
Union Bank of Switzerland
(Deutschland) Aktiengesellschaft

The Bonds are represented by a permanent global bearer bond (the "Global Bearer Bond") which has been deposited with Deutsche Börse Clearing AG, Frankfurt am Main ("DBC") on October 30, 1997. No definitive bonds or interest coupons will be delivered. The right of the holders of the Bonds to demand delivery of definitive bonds is excluded.

The Bonds have not been and will not be registered under the United States Securities Act of 1933, as amended, and are subject to U.S. tax law requirements. Subject to certain exceptions, the Bonds may not be offered or sold or delivered within the United States of America or to U.S. persons.

The Republic of Argentina (the "Issuer"), having made all reasonable inquiries, confirms that this Offering Circular contains all information with regard to the Issuer and the Bonds which is material in the context of the issue and the offering of the Bonds, that the information contained in this Offering Circular is in all material respects true and accurate and not misleading, that the opinions and intentions expressed in it are honestly held and that there are no other facts the omission of

which would in the context of the issue of the Bonds make any statement in this Offering Circular misleading in any material respect. The Issuer accepts responsibility accordingly.

No person is authorised to give any information or to make any representations regarding the Issuer or the Bonds other than those contained in this Offering Circular and any information or representation not contained in this Offering Circular must not be relied upon as having been authorised by or on behalf of the Issuer or any Manager.

The delivery of this Offering Circular at any time does not imply that the information contained in it is correct as at any time subsequent to the date of this Offering Circular.

The Managers do not make any representation or warranty, expressed or implied, as to the accuracy or completeness of the information in this Offering Circular. Each person receiving this Offering Circular acknowledges that such person has not relied on the Managers or any person affiliated with the Managers in connection with its investigation of the accuracy of such information or its investment decision. Each person contemplating making an investment in the Bonds must make its own investigation and analysis of the creditworthiness of the Issuer and its own determination of the suitability of any such investment, with particular reference to its own investment objectives and experience, and any other factors which may be relevant to it in connection with such investment.

This Offering Circular does not constitute an offer of or an invitation by or on behalf of the Issuer

or the Managers to subscribe for or purchase any of the Bonds.

The distribution of this Offering Circular and the offering of the Bonds in certain jurisdictions may be restricted by law Persons into whose possession this Offering Circular comes are required by the Issuer and the Managers to inform themselves about and to observe any such restrictions. For a further description of restrictions on offers and sales of Notes and on distribution of this Offering Circular see "Subscription and Sale".

In this Offering Circular, references to "DM" and "Deutsche Mark" are to the lawful currency of the Federal Republic of Germany.

In connection with this issue ABN AMRO Bank (Deutschland) AG may overallot or effect transactions which stabilize or maintain the market price of the Bonds at a level which might not otherwise prevail, to the extent permitted by applicable laws. Such stabilizing, if commenced, may be discontinued at any time.

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Subject of this Offering Circular

Subject of this Offering Circular are the DM 1,000,000,000 8% Deutsche Mark Bonds of 1997/2009 (the "Bonds") issued by the Republic of Argentina pursuant to Decree No. 1563/96 dated December 19, 1996 issued by the National Executive Power of the Republic of Argentina, as amended, and Resolution No. 476 dated October 27, 1997 of the Secretary of the Treasury of the Republic of Argentina.

General Information

Documents for Inspection

The documents mentioned in this Offering Circular may be inspected during usual business hours on any working day on which banks are open for business from the date hereof and so long as any of the Bonds remain outstanding at the offices of ABN AMRO Bank (Deutschland) AG, Mainzer Landstrasse 65, 60329 Frankfurt am Main.

Subscription and Sale

An international syndicate of banks and financial institutions (the "Banks" or "Managers") head-

ed by ABN AMRO Bank (Deutschland) AG as Lead Manager has purchased the Bonds to which this Offering Circular pertains. The Bonds were offered for sale, subject to availability, at the price of 102.25%. Payment date is October 30, 1997.

For the subscribers of the Bonds, the yield is 7.7060% per annum(*) calculated on the basis of the issue price of 102.25%.

Taxation in the Federal Republic of Germany

In the Federal Republic of Germany, interest payments in respect of Bonds held in custody by a bank in Germany to persons who are tax residents of Germany (or non-residents provided that the

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On October 30, 1997, the official exchange rate at the Frankfurt Foreign Exchange between Deutsche Mark and U.S.$ was DM 1.7190 = 1 U.S.$. Concerning the exchange rate of Argentine currency, the Peso, see "Monetary System—Foreign Exchange Rates and International Reserves"

(*)The yield was calculated in accordance with the following formula by using an iterative method for solving the equation for the variable (i) (internal rate of return or yield)

$$CF_0 = \frac{CF_1}{(1+i)} + \frac{CF_2}{(1+i)^2} + \quad + \frac{CF_3}{(1+1)^n}$$

CF0 = means the amount of capital input for the subscription of the Bonds

CFI to CFn = means the cash inflow as of October 30 of each year until maturity of the Bonds (interest payments and repayment of principal amount)

n = means the life of the issue in years

interest income falls in a category of income from German sources, such as income effectively connected with a German trade or business; income from the letting and leasing of Germany property, etc) are subject to an advanced interest income tax (Zinsabschlagsteuer) of 30%. In addition, there is a solidarity-surcharge tax (Solidaritätszuschlag) of 7.5% on the income tax, so that the total rate is 32.25%. The tax withheld may later be credited as a prepayment for purposes of the income tax assessment.

Accrued interest for the time of ownership is also subject to this withholding tax.

The above summary describes the principal applications of German withholding tax. For their particular case, investors should obtain individual tax advice.

Sales Restrictions

The Bonds have not been and will not be registered under the U.S. Securities Act of 1933, as amended, (the "Securities Act") and may not be offered or sold within the United States or to or for the account of, United States persons, except pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act. Each Manager has represented and agreed that it has not offered or sold, and will not offer or sell, any Bonds constituting part of its allotment within the United States or to, or for the benefit or account of United States persons, except in accordance with Regulation S under the Securities Act. Accordingly, each Bank has represented and

agreed that neither it, its affiliates nor any persons acting on its or their behalf have engaged or will engage in any directed selling efforts with respect to the Bonds Terms used in this paragraph have the meaning given to them by Regulation S under the Securities Act.

In addition, under U.S. Tres. Reg. §1.163-5(c)(2)(i)(C) (the "C Rules"), Bonds must be issued and delivered outside the United States and its possessions in connection with their original issuance. Each Manager has represented and agreed that it has not offered, sold or delivered, and will not offer, sell or deliver, directly or indirectly, Bonds within the United States or its possessions in connection with their original issuance. Further, in connection with their original issuance of Bonds, each Manager has represented that it has not communicated, and will not communicate, directly or indirectly, with a prospective purchaser if either such manager or such purchaser is within the United States or its possessions, nor has it, directly or indirectly, through any of its U.S. offices communicated nor will it communicate with any prospective purchaser Terms used in this paragraph have the meanings given to them by the U.S. Internal Revenue Code and regulations thereunder, including the C Rules

Each Manager represents and agrees that:

(a) it has not offered or sold and, prior to the date six months after the date of issue of the Bonds, will not offer or sell any Bonds to persons in the United Kingdom except to persons whose ordi-

nary activities involve them in acquiring, holding, managing or disposing of investments (as principal or agent) for the purposes of their businesses or otherwise in circumstances which have not resulted and will not result in an offer to the public in the United Kingdom within the meaning of the Public Offers of Securities Regulations 1996 (the "Regulations");

(b) it has complied and will comply with all applicable provisions of the Financial Services Act 1986 and the Regulations with regard to anything done by it in relation to the Bonds in, from or otherwise involving the United Kingdom; and

(c) it has only issued or passed on and will only issue or pass on in the United Kingdom any document received by it in connection with the issue of the Bonds to a person who is of a kind described in Article 11(3) of the Financial Services Act 1986 (Investment Advertisements) (Exemptions) Order 1996 or is a person to whom such document may otherwise lawfully be issued or passed on.

As used herein, "United Kingdom" means the United Kingdom of Great Britain and Northern Ireland.

The Bonds are issued under the "Euro Securities Exemption" pursuant to § 4(1) No. 1 and § 4(2) of the Securities Sales Prospectus Act of the Federal Republic of Germany (Wertpapier-Verkaufsprospektgesetz) of December 13, 1990 (the "Securities

Prospectus Act"). Each Manager is aware of the fact that no sales prospectus (Wertpapier-Verkaufsprospekt) in Germany has been and will be published and each Manager will comply with the Securities Prospectus Act and the restrictions applying to the offer and distribution of Euro Securities. In particular, each Manager undertakes not to engage in public advertisements (öffentliche Werbung) in the Federal Republic of Germany with respect to the Bonds.

In addition to the specific restrictions set out above, each Manager has agreed that it will observe all applicable provisions of law in each jurisdiction in or from which it may offer or sell the Bonds or distribute any offering material.

Use or Proceeds

The net proceeds of the issue of the Bonds amounting to approximately DM 992.5 million will be used by the Issuer for general governmental purposes.

Security Codes

German Security Code:	195 490
Common Code:	811 5036
ISIN Code:	DE 000 195 490 7

Investment Considerations

Investors considering the purchase of Bonds should decide whether to purchase only after thorough evaluation of the particular risks described below.

The Issuer is a country which, after a debt crisis of at least ten years, comprehensively rescheduled with approximately 750 international creditor banks substantially all of the foreign currency denominated commercial bank debt of the Public Sector in 1993. The claims of commercial banks subject to the rescheduling amounted to U.S.$ 28.5 billion including an estimated U.S.$ 9.2 billion in interest arrears. In connection with the rescheduling, the creditor banks forgave part of their capital claims and refinanced the remainder by accepting partially collateralized securities with maturities of up to 30 years.

The rescheduling effected a reduction in the face amount of debt denominated in foreign currency of approximately U.S.$ 2.3 billion or a reduction of the net present value of approximately U.S.$ 5.6 billion The gross foreign currency denominated debt of the Non-Financial Public Sector was U.S.$ 63.5 billion at the end of 1992, U.S.$ 64.1 billion at the end of 1993, U.S.$ 72.3 billion at the end of 1994. U.S.$ 81.2 billion at the end of 1995 and U.S.$ 88.9 billion [1] at the end of 1996.

The Argentine Government's current stabilization program is built around the plan announced by then Economy Minister Cavallo on March 20, 1991 (the "Convertibility Plan") and approved by Congress through passage of the Convertibility Law, as amended and supplemented. The Convertibility Plan has sought to reduce inflation and restore economic growth through reforms relating to the tax system, privatization and the opening of the econo-

[1] Preliminary figure.

my that are intended to address underlying structural problems that had distorted fiscal and monetary policy.

Although some of the Convertibility Plan's goals have already been achieved and its initial success has attracted international attention, a number of issues remain to be resolved before the economy of Argentina can achieve long-term stability.

The Convertibility Plan is centered on two fundamental principles:

(1) full international reserve backing for the monetary base. The monetary base (consisting of currency in circulation) is not to exceed Banco Central's gross international assets at a fixed rate of one peso per U.S. dollar Gross international assets include Banco Central's holdings of gold, foreign exchange (including short-term investments), U.S. dollar-denominated Argentine government notes (in a percentage not to exceed one third of Banco Central's unrestricted reserves) and its net Asociación Latinoamericana de Integración ("ALADI") claims (except overdue claims), all freely available and valued at market prices. Under this arrangement, in which the peso is fully convertible into the U.S. dollar, the monetary base can only be increased when backed by increases in the level of international reserves, and not whenever the public sector or the financial sector need to be financed.

(2) the targeted elimination of the fiscal deficit and the achievement of a surplus in the primary balance in order to provide funds for the Gov-

ernment to service its debt and thereby eliminate the need for further borrowings.

Outstanding notes and bonds in foreign currency (with exception of the Brady Bonds) of the Issuer are rated Ba3[2] by Moody's Investors Service ("Moody's") and BB[3] by Standard & Poor's Ratings Service, a division of The McGraw-Hill Companies, Inc. ("S&P").

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(2) Definition by Moody's

"Bonds which are rated Ba are judged to have speculative elements; their future cannot be considered as well-assured. Often the protection of interest and principal payments may be very moderate, and thereby not well safeguarded during both good and bad times over the future. Uncertainty of position characterizes bonds in this class.

Moody's applies numerical modifiers 1 2 and 3 in each generic rating classification from Aa through B in its corporate bond rating system The modifier 1 indicates that the security ranks in the higher end of its generic rating category, the modifier 2 indicates a midrange ranking, and the modifier 3 indicates that the issue ranks in the lower end of its generic rating category."

(3) Definition by S & P

"BB, B, CCC, CC, C. Debt rated 'BB', 'B', 'CCC', 'CC' and 'C' is regarded, on balance, as predominantly speculative with respect to capacity to pay interest and repay principal in accordance with the terms of the obligation. 'BB' indicates the lowest degree of speculation and 'C' the highest degree of speculation. While such debt will likely have some quality and protective characteristics, these are outweighed by large uncertainties or major risk exposures to adverse conditions. BB Debt rated 'BB' has less near-term vulnerability to default than other speculative issues. However, it faces major ongoing uncertainties or exposure to adverse business, financial,

Payments with respect to bonds and notes issued by Argentina were properly made during the debt crisis of the 1980s and in the wake of the Mexican peso crisis (1994/95). However, this fact cannot be viewed as a guarantee that payments with respect to the bonds and notes of Argentina, outstanding in a possible future debt crisis, will be made in the same manner. The structure of Argentina's external debt, which has changed as a consequence of the rescheduling—the share of bonds and notes in the external debt has increased considerably—creates a strong possibility that the payment on notes and bonds in foreign currency issued by Argentina may also be adversely affected when serious problems in connection with Argentina's foreign payments and/or budget occur.

Therefore the Bonds are suitable only for speculative investors who are in a position to assess special risks.

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or economic conditions which could lead to inadequate capacity to meet timely interest and principal payments. The 'BB' rating category is also used for debt subordinated to senior debt that is assigned an actual or implied 'BBB–' rating Plus (+) or Minus (–). The ratings from 'AA' to 'CCC' may be modified by the addition of a plus or minus sign to show relative standing within the major categories."

The Conditions of the Issue will be printed in the German language: their non-binding translation follows:

Conditions of the Issue

§ 1
(Form and Denomination)

(1) The issue in the aggregate principal amount of

DM 1,000,000,000.-

divided into

1,000,000 Bonds of DM 1,000 each
Nos. 1 to 1,000,000

(the "Bonds") payable to bearer and ranking *pari passu* among each other

(2) The Bonds, including the right to demand payment of interest, shall be represented by a permanent Global Bearer Bond (the "Global Bearer Bond") which has been deposited with Deutsche Börse Clearing AG, Frankfurt am Main ("DBC") No definitive bonds or interest Coupons will be delivered The right of the holders of the Bonds (the "Bondholders") for the delivery of individual bonds is excluded. The Bonds are transferable as co-ownership participation in the Global Bearer Bond pursuant to the rules and regulations of the DEC and are transferable outside the Federal Republic of Germany pursuant to the rules and regulations of the Euroclear System, Brussels, and CEDEL bank société anonyme, Luxembourg. The Global Bearer Bond shall be signed manually or in facsimile by an

authorized representative of the Republic of Argentina and shall bear the handwritten signature of a control officer of the Principal Paying Agent (as defined below).

§ 2
(Single Currency, Redenomination)

The European Economic and Monetary Union (EMU) provides for the introduction of a single currency (Euro) and the substitution of the national currencies of the Member States participating in EMU. On the date of the introduction of the single currency (Euro) for the Federal Republic of Germany, the currency specified in these Conditions of the Issue and the currency specified for payments under these Conditions of the Issue shall be substituted by the single currency (Euro) and the changeover into the single currency (Euro) shall take place Conversions shall be based on the officially fixed conversion rate. Provided that the law which applies to the Bonds does not prescribe a method of redenomination which is different from the method stipulated below and provided that the method stipulated below is compatible with such law, the Republic reserves the right, on or after the date on which the Federal Republic of Germany shall have become a participating member state of the European Monetary Union,. that has adopted the single European currency, to determine in accordance with § 315 of the German Civil Code (Bürgerliches Gesetzbuch) that the face amounts of the Bonds shall henceforth be deemed to be expressed in the single European currency ("Euro"). The Republic

shall also be entitled to divide the face amounts of Bonds into smaller face amounts expressed in Euro and round new face amounts up or down by up to $^1/_2$ cent per Bonds or pay out fractional amounts of the principal on the next following interest payment date. The new bonds resulting from the redenomination of Bonds into Euro and their division into new face amounts shall also be governed by these Conditions of the Issue. If so determined by the Republic, redenominated certificates shall be deemed to be global certificates representing the Bonds resulting from such redenomination and/or division into new face amounts. The Bondholders shall not have the right to require the exchange of such redenominated global certificates for definitive bonds.

The redenomination of the Bonds, the division into new face amounts and the conversion of the Bonds into global certificates shall become effective with their publication by the Republic in accordance with § 12 of these Conditions of the Issue.

§ 3
(Interest)

(1) The Bonds bear interest at the rate of 8% per annum from October 30, 1997. Interest shall be payable annually in arrears on October 30 of each year, the first interest payment falling due on October 30, 1998 The Bonds shall cease to bear interest as of the beginning of the day on which they become due for redemption.

(2) Should the Republic fail to redeem the Bonds when due (or, where the due date is a Saturday, Sunday, legal holiday or not a Banking Day at the place of performance (as defined in § 13(2)), on the next succeeding Banking Day), interest shall continue to accrue beyond the due date until the actual redemption of the Bonds but not beyond the expiration of the fourteenth day after the date on which a notice has been given by the Principal Paying Agent in accordance with § 12 below to the effect that the necessary funds for redemption have been provided to the Principal Paying Agent. "Banking Day" shall mean a day on which banks are generally open for business at the place of performance.

(3) If it is necessary to compute interest for any period of less than a year, interest shall be calculated on the basis of a 360-day year consisting of 12 months of 30 days each, and, in the case of an incomplete month, the actual number of days elapsed.

§ 4
(Redemption)

(1) The Bonds will he redeemed at par on October 30, 2009.

(2) Neither the introduction of a single currency (Euro) nor the substitution of the national currencies of the Member States of the EU participating in EMU nor the fixing of the official conversion rate nor any economic consequences that arise from any of the aforementioned events or in connection with

EMU shall give rise to any right to prematurely terminate, contest, cancel, rescind, modify or renegotiate the Conditions of the Issue or any of their provisions or to raise any other objections and/or exceptions or to assert any claims for compensation. The Bonds and the Conditions of the Issue and all their provisions shall be continued unchanged.

§ 5
(Payments)

(1) The Republic undertakes to pay, as and when due, principal and interest in such freely convertible and transferable currency as at the time of payment is legal tender in the Federal Republic of Germany. Principal and interest shall be paid to the Bondholders only at the offices outside the United States of America or its possessions of ABN AMRO Bank (Deutschland) AG (the "Principal Paying Agent"), without it being permissible, except for compliance with applicable tax foreign exchange or other laws and regulations of the place of payment, to require the execution of an affidavit or compliance with any other formality whatsoever.

(2) The Principal Paying Agent shall transfer at no charge the amounts to be paid under the Bonds to the DBC for credit to the relevant accounts of the depositors of Bonds for the purposes of transfer to the Bondholders.

(3) The paying agents, in their Capacity as such, are acting exclusively as agents for the Republic and do not have any relationship of agency or trust with the Bondholders. The Republic may with the

consent of the Principal Paying Agent appoint additional paying agents and revoke the appointment of paying agents; provided, however, that the Republic may not appoint any paying agent located in the United States of America or its possessions. Such appointment or revocation shall be published in accordance with § 12.

(4) As long as the Bonds are listed on the Frankfurt Stock Exchange and the Rules of the Frankfurt Stock Exchange so require, the Republic shall maintain a Paying Agent with a specified office in Frankfurt am Main.

(5) The Republic may deposit with the Amtsgericht Frankfurt am Main principal and interest not claimed by Bondholders within twelve months after maturity. To the extent that the Republic waives its right to withdraw such deposit the relevant claims of the Bondholders against the Republic shall cease.

§ 6
(Taxes)

All payments of principal and interest in respect of the Bonds by the Republic will be made free and clear of, and without withholding or deduction for or on account of, any present or future taxes, duties, assessments governmental charges or other duties of whatever nature imposed, levied, collected, withheld or assessed by or within the Republic of Argentina or any authority therein or thereof having power to tax (together "Taxes"), unless withholding or deduction is required by law. In

such event, the Republic shall pay such additional amounts as will be necessary so that the Bondholders receive such amounts as would have been received by them had no such withholding or deduction been required, except that no such additional amounts shall be payable with respect to any Bond to a holder (or to a third party on behalf of a holder):

(a) where such holder is liable to such Taxes in respect of any Bond by reason of his having some connection with the Republic of Argentina other than the mere holding of such Bond; or

(b) by reason of failure of such holder to present such holder's Bond for payment of principal and interest on such Bond at maturity or within thirty days after the relevant payment is first made available for payment to the holder, whichever is earlier.

Any reference to "principal" and/or "interest" of the Bonds shall be deemed to include any additional amounts which may be payable under this § 6.

§ 7
(Transfer)

The Republic undertakes to pay to or to the order of the Principal Paying Agent in the lawful currency of the Federal Republic of Germany all sums required for the performance of the financial obligations arising from these Conditions of the Issue.

§ 8
(Presentation Period)

The presentation period provided in § 801, subparagraph 1, sentence 1, of the German Civil Code (Bürgerliches Gesetzbuch) shall be reduced to ten years for the Bonds commencing on the due date for payment in respect thereof.

§ 9
(Status, Negative Pledge)

(1) The Bonds constitute (subject to subparagraphs (2) and (3)) direct, unconditional, unsecured and unsubordinated obligations of the Republic and shall at all times rank pari passu and without any preference among themselves. The payment obligations of the Republic under the Bonds shall (subject to subparagraphs (2) and (3)) at all times rank at least equally with all its other present and future unsecured and unsubordinated External Indebtedness (as defined below).

(2) So long as any principal and/or interest of the Bonds remains outstanding, but only up to the time when, upon maturity of the Bonds, the payment of all amounts of principal and interest has been duly provided for, save for the exceptions set out in subparagraph (3), the Republic will not create or permit to subsist any lien, pledge, mortgage, security interest, deed of trust, charge or other encumbrance or preferential arrangement which has the practical effect of constituting a security interest ("Lien") upon the whole or any part of its assets or revenues to secure any Public External Indebted-

ness (as defined below) of the Republic unless, at the same time or prior thereto, the Republic's obligations under the Bonds are secured equally and rateably therewith.

(3) Notwithstanding the foregoing, the Republic may permit to subsist.

(i) any Lien over property to secure Public External Indebtedness of the Republic incurred for the purpose of financing the acquisition of such property, any renewal or extension of any such Lien which is limited to the original property covered thereby and which secures any renewal or extension of the original secured financing,

(ii) any Lien existing over such property at the at the time of its acquisition to secure Public External Indebtedness of the Republic and any renewal or extension of any such Lien which is limited to the original property covered thereby and which secures any renewal or extension of the original secured financing,

(iii) any Lien crested in connection with the the transactions contemplated by the Republic of Argentina 1992 Financing Plan dated June 23, 1992 (the "1992 Financing Plan") and the implementing documentation therefor, including any Lien to secure obligations under the collateralised bonds issued thereunder (the "Par and Discount Bonds") and any Lien securing indebtedness

outstanding on the date of the issue of the Bonds to the extent required to be equally and rateably secured with the Par and Discount Bonds,

(iv) any Lien in existence on the date of issue of the Bonds,

(v) any Lien securing Public External Indebtedness of the Republic issued upon surrender or cancellation of any of the Par and Discount Bonds or the principal amount of any indebtedness outstanding as of June 23, 1992, in each case, to the extent such Lien is created to secure such Public External Indebtedness on a basis comparable to the Par and Discount Bonds,

(vi) any Lien over any of the Par and Discount Bonds, and

(vii) any Lien securing Public External Indebtedness incurred for the purpose of financing all or part of the costs of the acquisition, construction or development of a project provided that (a) the holders of such Public External Indebtedness expressly agree to limit their recourse to the assets and revenues of such project as the principal source of repayment of such Public External Indebtedness, and (b) the property over which such Lien is granted consists solely of such assets and revenues.

(4) As used in these Conditions of the Issue

"External Indebtedness" means obligations (other than the Bonds) for borrowed money or evidenced by bonds, debentures, notes or other similar instruments denominated or payable, or which at the option of the holder thereof may be payable, in a currency other than the lawful currency of the Republic provided that no Domestic Foreign Currency Indebtedness shall constitute External Indebtedness,

"Public External Indebtedness" means, with respect to the Republic, any External Indebtedness of, or guaranteed by, the Republic, as the case may be, which (i) is publicly offered or privately placed in securities markets, (ii) is in the form of, or represented by, bonds, notes or other securities or any guarantees thereof and (iii) is, or was intended at the time of issue to be, quoted, listed or traded on any stock exchange, automated trading system or over-the-counter or other securities market including, without prejudice to the general validity of the foregoing, securities eligible for PORTAL or a similar market for the trading of securities eligible for sale pursuant to Rule 144A under the U.S. Securities Act of 1933 (or any successor law or regulation of similar effect),

"Domestic Foreign Currency Indebtedness" means

(i) the following indebtedness (a) *Bonos del Tesoro* issued under Decree No. 1527/91 and Decree No. 1703/91, (b) *Bonos de Consolidación* issued under Law No. 23,982 and Decree No 2140/91, (c) *Bonos de Consolidación de Deudas Previsionales* issued

under Law No 23,982 and Decree No. 2 140/91, (d) *Bonos de la Tesorería a 10 Años de Plazo* issued under Decree No 211/92 and Decree No 526/92, (e) *Bonos de la Tesorería a 5 años de Plazo* issued under Decree No. 211/92 and Decree No. 526/92, (f) *Ferrobonos* issued under Decree No. 52/92 and Decree No 526/92, and (g) *Bonos de Consolidación de Regalías de Hidrocarburos a 16 años de Plazo* issued under Decree No. 2284/92 and Decree No. 54/93, (h) *Bonos del Tesoro a Mediano Plazo en Dólares Estadounidenses* issued under Law No 24,156 and Decree No. 340/96, and (i) *Bonos de Consolidación* issued under Law No 24,411 and Decree No. 726/97, and

(ii) any indebtedness issued in exchange, or as replacement, for the Indebtedness referred so in § 9(i)(a)-(i) above, and

(iii) any other indebtedness payable by its terms, or which at the option of the holder thereof may be payable, in a currency other than the lawful currency of the Republic of Argentina which is (a) offered exclusively within the Republic of Argentina, or (b) issued in payment, exchange, substitution, discharge or replacement of indebtedness payable in the lawful currency of the Republic of Argentina; provided that in no event shall the following indebtedness be deemed to constitute "Domestic Foreign Currency Indebtedness" (x) *Bonos Externos de la*

Republica Argentina issued under Law No 19,686 enacted on June 15, 1972 and (y) any indebtedness issued by the Republic in exchange, or as replacement, for any indebtedness referred to in (x) above.

§ 10
(Events of Default)

(1) If any of the following events ("Events of Default") occurs and is continuing, the holder of any Bond may, upon written notice to the Principal Paying Agent given before all defaults in respect of all of the Bonds shall have been remedied, declare such bond to be immediately due and payable together with accrued interest thereon, as of the date on which such notice is received by the Principal Paying Agent.

(a) Non-Payment: the Republic fails to pay any principal of any of the Bonds when due and payable or fails to pay any interest on any of the Bonds when due and payable and such failure continues for a period of 30 days, or

(b) Breach of Other Obligation: the Republic does not perform or comply with any one or more of its other obligations under the Bonds, which default is incapable of remedy or is not remedied within 90 days after notice of such default shall have been given to the Principal Paying Agent by a Bondholder; or

(c) Cross Default: any event or condition shall occur which results in the acceleration of the maturity (other than by optional or mandatory prepayment or redemption) of any Public External Indebtedness of the Republic having an aggregate principal amount of U.S.$ 30,000,000 or more, or any default in the payment or principal of, or premium or prepayment charge (if any) or interest on, any such Public External Indebtedness having an aggregate principal amount of U.S. $ 30,000,000 or more, shall occur when and as the same shall become due and payable, if such default shall continue for more than the period of grace, if any, originally applicable thereto, or

(d) Moratorium: a moratorium on the payment of principal of, or interest on, the Public External Indebtedness of the Republic shall be proposed or declared by the Republic, or

(e) Validity: the validity of the Bonds shall be contested by the Republic.

The right to declare the Bonds due shall terminate as at the time that all amounts of principal of, and interest on, the Bonds have been placed at the disposal of the Principal Paying Agent.

(2) Any notice, including any notice declaring the Bonds due in accordance with subparagraph (1) shall be made by means of a written declaration delivered by hand or registered mail to the Principal Paying Agent.

(3) If any of the events specified in subparagraph (1)(b) through (d) any notice declaring Bonds immediately due and payable shall unless at the time such notice is received, any of the other events specified in subparagraph (1) entitling Bondholders to declare their Bonds due has occurred, become effective only when the Principal Paying Agent has received such notices from the holders of at least DM 100,000,000—in principal amount or (if this is less than DM 100,000,000—one-tenth in principal amount of the Bonds then outstanding.

§ 11
(Issue of Additional Bonds/Consolidation)

The Republic reserves the right from time to time without the consent of the Bondholders to issue additional bonds with identical terms, so that the same shall be consolidated, form a single issue with and increase the aggregate principal amount of these Bonds The term "Bonds" as used herein shall, in the event of such increase, also comprise such additionally issued bonds.

The Republic may also from time to time, without the consent of the Bondholders consolidate the Bonds with one or more issues of other bonds issued by it, which are originally denominated in ECU, Euro or a currency substituted by the Euro and are, in respect of all periods subsequent to such consolidation, subject to the same terms and conditions as the Bonds.

The Issuing and Principal Paying Agency Agreement as between the Republic and the Principal Paying Agent will be amended accordingly.

§ 12
(Notices)

All notices concerning the Bonds shall be published in the German Federal Gazette (Bundesanzeiger) and in at least one national newspaper designated by the Frankfurt Stock Exchange for such notices. For legal purposes the publication in the Federal Gazette shall suffice.

§ 13
(Governing Law, Place of Performance, Place of Jurisdiction, Waiver of Immunity)

(1) The Bonds both as to form and content, as well as the rights and duties of the Bondholders, the Republic and the Paying Agents shall in all respects be determined in accordance with German law.

(2) Place of performance shall be Frankfurt am Main.

(3) The Republic hereby irrevocably submits to the non-exclusive jurisdiction of the District Court (Landgericht) in Frankfurt am Main and any federal court sitting in the City of Buenos Aires as well as any appellate court of any thereof, in any suit, action or proceeding against it arising out of or relating to these Bonds. The Republic hereby irrevocably waives—to the fullest extent it may effectively do so—the defense of an inconvenient forum to the maintenance of such suit or action or such proceeding and any present or future objection to such suit, action or proceeding whether on the grounds of venue, residence or domicile. The

Republic agrees that a final judgment in any such suit, action or proceeding in the courts mentioned above shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or any other method provided by law.

(4) To the extent that the Republic has or hereafter may acquire any immunity (sovereign or otherwise) from jurisdiction of any court or from any legal process (whether through service or notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise), with respect to itself or its revenues, assets or properties, the Republic hereby irrevocably waives such immunity in respect of its obligations under the Bonds to the extent it is permitted to do so under applicable law.

Notwithstanding the foregoing, attachment prior to judgment or attachment in aid of execution will not be ordered by Argentine courts in respect of (i) the assets which constitute freely available reserves pursuant to Article 6 of the Convertibility Law, (ii) property of the public domain located in the territory of Argentina included within the provisions of Articles 2,337 and 2,340 of the Civil Code of Argentina, (iii) property located in the territory of Argentina which is dedicated to providing an essential public service, and (iv) property covered by Articles 66 and 67 of the Permanent Supplementary Budget Law.

(5) For any legal disputes or other proceedings before German courts, the Republic appoints FIDEUROP Treuhandgesellschaft fur den gemein-

samen Markt mbH, Marie-Curie-Strasse 30, D-60493 Frankfurt am Main Germany, as authorized agent for accepting service of process.

(6) The German text of these Conditions of the Issue is legally binding. The English translation is for convenience only.

§ 14
(Severability)

Should any provision of these Conditions of the Issue be or become invalid in whole or in part, the other provisions shall remain in force. The invalid provisions shall, according to the intent and purpose of these Conditions of the Issue be replaced by such valid provision which in its economic effect corresponds to the invalid provision.

22. *Consent to Service; Jurisdiction.* The Republic hereby appoints Banco de la Nación Argentina, at its office located at 299 Park Avenue, New York, New York 10171, and, if such person is not maintained by the Republic as its agent for such purpose, the Republic will appoint CT Corporation System to act as its agent for such purpose] as its authorized agent (the "Authorized Agent") upon whom process may be served in any action arising out of or based on the Securities or this Agreement by the holder of any Security which may be instituted in any state or federal court in The City of New York, and expressly accepts the jurisdiction of any such court in respect of such action. Such appointment shall be irrevocable until all amounts in respect of the principal of and any interest due and to become due on or in respect of all the Securities have been provided to the Fiscal Agent pursuant to the terms hereof, except that, if for any reason, such Authorized Agent ceases to be able to act as Authorized Agent or to have an address in the Borough of Manhattan, The City of New York, the Republic will appoint another person in the Borough of Manhattan, The City of New York, selected in its discretion, as such Authorized Agent. Prior to the date of issuance of any Securities hereunder, the Republic shall obtain the consent of Banco de la Nación Argentina to its appointment as such Authorized Agent, a copy of which acceptance it shall provide to the Fiscal Agent. The Republic shall take any and all action, including the filing of any and all documents and instruments, that may be necessary to continue

such appointment or appointments in full force and effect as aforesaid. Upon receipt of such service of process, the Authorized Agent shall advise the Subministry of Finance promptly by telecopier at 011-54-1-349-6080. Service of process upon the Authorized Agent at the address indicated above, as such address may be changed within the Borough of Manhattan, The City of New York by notice given by the Authorized Agent to each party hereto, shall be deemed, in every respect, effective service of process upon the Republic. The Republic hereby irrevocably and unconditionally waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of venue of any aforesaid action arising out of or in connection with this Agreement brought in any such court has been brought in an inconvenient forum. Neither such appointment nor such acceptance of jurisdiction shall be interpreted to include actions brought under the United States federal securities laws. This appointment and acceptance of jurisdiction is intended to be effective upon execution of this agreement without any further act by the Republic before any such court and introduction of a true copy of this Agreement into evidence shall be conclusive and final evidence of such waiver.

Notwithstanding the foregoing, any action arising out of or based on the Securities may be instituted by the holder of any Security in any competent court in the Republic of Argentina.

The Republic hereby irrevocably waives and agrees not to plead any immunity from the jurisdiction of any such court to which it might otherwise be entitled in any action arising out of or based on the Securities or this Agreement by the holder of any Security.

23. *Governing Law and Counterparts.* This Agreement shall be governed by, and interpreted in accordance with, the laws of the State of New York. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.